disposition to the panel who will hear the appeal on the merits, filed. (Covers 71-1773-5).

10–20–71 Brief for amicus curiae Chamber of Commerce of the United States of America, Received October 2, 1971, filed. (25 copies). (Covers 71-1773-5).

11– 5–71 Order (Clerk) granting appellants' motion to consolidate appeals for briefing and argument, filed. (Covers 71-1773-5).

11– 3–71 Brief for appellee, received November 4, 1971, filed. (25) copies. Certificate of service by mail on November 3, 1971, filed.

11–10–71 Letter, dated November 9, 1971, from counsel for Juanita E. Dicks, Welfare Director of the Municipal Welfare Department of the City of Camden, stating that they join in adopting the brief filed on behalf of appellees, McCorkle, Engelman and Streng.

11– 4–71 Brief for appellees, McCorkle, Engelman and Streng, received November 8, 1971, filed. (25 copies). (Covers 71-1773-75).

10–29–72 Consent motion International Brotherhood of Teamsters, Chauffers Warehousemen and Helpers of America for leave to file brief amicus curiae and for leave to extend time to file amicus curiae brief to November 18, 1971, filed. (5 copies). Certificate of service attached. (4 consent letters attached. (Covers 71-1773-5).

11–10–71 Motion by Chamber of Commerce of the United States for reconsideration and suggestion for reconsideration en banc of this Court's order dated October 20, 1971 which denied the Chamber's motion to intervene, filed. (11 copies). Certificate of service attached. (Covers 71-1773-5).

11–18–71 Amicus Curiae Brief for International Brotherhood of Teamsters, Chauffers, Wearhousemen and Helpers of America, filed. (25 copies). Certificate of service by mail on November 18, 1971 attached. (Covers 71-1773-5).

11–19–71 Reply Memorandum by appellee to motion for reconsideration and suggestion for reconsideration en banc, received and filed. (9 copies). Certificate of service attached. (Covers 71-1773-5).

11–24–71 Letter, dated November 24, 1971, with enclosures, from John W. Pelino, Esquire, counsel for the Chamber of Commerce of the United States, in regard to the motion by the Chamber of Commerce of the United States for reconsideration and suggestion for reconsideration en banc of this Court's order dated October 20, 1971, filed. (6 copies). (Covers 71-1773-5). Proof of service in letter.

12– 3–71 Reply brief for appellants (and appendix received for the information of the Court) received and filed. (25 copies). (Covers 71-1773-5).

12– 9–71 Order denying petition for rehearing by The Chamber of Commerce of the United States, filed. (Covers 71-1773-5).

12–28–71 Motion by amicus curiae, Chamber of Commerce of the U. S. A., for leave to file amicus reply brief, filed. (Covers 71-1773-5).

12–31–71 Reply of Teamsters Local Union 676 to motion for leave to file amicus reply brief by U. S. Chamber of Commerce, filed. Certificate of Service attached. (Covers 71-1773-5).

1– 7–72 Response to Reply of Teamsters to Motion for leave to file amicus reply brief rec'd from amicus curiae, U. S. Chamber of Commerce, rec'd. (Covers 71-1773-5).

9–14–72 Argued. Coram: McLaughlin, Adams and Gibbons. (Covers 71-1773-71-1775).

9–28–72 Supplemental brief on behalf of Chamber of Commerce of U. S., amicus curiae, filed. (4 copies) (Covers 71-1773-71-1775).

11–22–72 Opinion of the Court (McLaughlin, Adams and Gibbons, Circuit Judges with separate dissenting opinion by Judge Gibbons), filed. (Covers 71-1773/71-1775).

11–22–72 Judgment dismissing the appeals in these cases as moot, and remanding to the District Court with directions to vacate its judgment, filed July 13, 1971, and to dismiss for the same reason, all in accordance with the opinion of this Court. Costs taxed against appellants, filed. (Covers 71-1773/71-1775).

11–22–72 Order (McLaughlin, Adams and Gibbons, Circuit Judges) granting amicus status in this appeal to the United States Chamber of Commerce and directing that the affidavit of Professor Northrup will be received and filed with the record, filed. (Covers 71-1773/71-1775) on the merits.

12– 6–72 Petition for Rehearing, filed. (25 copies) (Covers 71-1773/71-1775).

12– 6–72 Petition for Rehearing of November 22, 1972 panel order by Chamber of Commerce and Suggestion for rehearing in banc, filed. (25 copies). (Covers 71-1773/4/5).

12– 6–72 Motion by Chamber of Commerce for leave to file a supplement to above petition for rehearing of 11/22/72 panel order out of time, filed. (25 copies).

12–20–72 Order (Seitz, McLaughlin, Van Dusen, Aldisert, Adams, Gibbons, Rosenn) denying petition for re-

hearing en banc of this Court's panel order of 11/22/72 filed by Chamber of Commerce of U. S. A., filed. (Covers 71-1773/4/5).

12–20–72 Order (Seitz, McLaughlin, Van Dusen, Aldisert, Adams, Gibbons, Rosenn) denying petition for rehearing of Super Tire Engineering Co. et al., filed. (Covers 71-1773/4/5).

12–29–72 Certified judgment in lieu of formal mandate issued.

12–29–72 Record returned to Clerk of D. C.

1– 3–73 Certified copy of D. C. order dated January 2, 1973 by John J. Kitche, U. S. D. J. dismissing the complaint in this matter as moot, rec'd from Clerk of D. C., filed.

1– 3–73 Receipt for record, filed.

3–14–73 Copy of letter dated March 12, 1973 rec'd from Clerk of Supreme Court extending the time for filing a petition for writ of certiorari to and including May 19, 1973. (Covers 71-1773/5).

5–24–73 Notice of filing (on May 19, 1973) of petition for writ of certiorari rec'd from Clerk of Supreme Court, filed. (S. C. No. 72-1554). (Covers 71-1773/4/5).

UNITED STATES COURT OF APPEALS

For the Third Circuit

Case No. 71-1774

8–24–71	Copy of Notice of Appeal rec'd. July 17, 1971, filed.
10– 2–71	Motion by Chamber of Commerce of the United States of America for leave to intervene, or alternatively, to participate as Amicus Curiae, filed. (20 copies). Certificate of service by mail on October 1, 1971, filed. (Covers 71-1773-5).
10– 8–71	Answer by appellee Teamsters Local Union No. 676, to motion of Chamber of Commerce to intervene, etc., and Motion to strike and delete from record the affidavit of Professor Herbert Northrup appended to Amicus Curiae brief, filed. (4 copies). Certificate of service attached. (Covers 71-1773-5).
10–15–71	Chamber of Commerce's reply to answer by appellee, Teamsters Local Union No. 676, to motion by Chamber of Commerce motion for leave to intervene, etc., received. (4 copies). Certificate of service attached. (Covers 71-1773-5).
10–20–71	Order (Aldisert, Gibbons and Rosenn, Circuit Judges) denying motion by Chamber of Commerce of the United States of America for leave to intervene; granting Chamber of Commerce of the United States leave to file amicus curiae brief; and referring motion by appellee Teamsters Local Union 676, to strike and delete from record the affidavit of Professor Herbert Northrup appended to the Chamber of Commerce amicus curiae brief, for disposition to the panel who will hear the appeal on the merits, filed. (Covers 71-1773-5).

10–20–71	Brief for amicus curiae Chamber of Commerce of the United States of America, received October 2, 1971, filed. (25 copies). (Covers 71-1773-5).
10–23–71	Motion by appellants to consolidate appeals for briefing and argument, filed. (4 copies). Certificate of service attached. (Covers 71-1773-5).
11– 3–71	Submitted on above motion. Clerk.

UNITED STATES COURT OF APPEALS

For the Third Circuit

Case No. 71-1775

8–24–71 Copy of Notice of Appeal rec'd. July 17, 1971, filed.

Record rec'd. August 16, 1971, filed. (Covers 71-1773-71-1775).

Appearance of Herbert G. Keene, Jr., Esquire; Stradley, Ronon, Stevens and Young and A. Fred Ruttenberg, Esquire; Archer, Greiner, Hunter and Read for appellants filed. (Covers 71-1773-71-1775).

10– 2–71 Motion by Chamber of Commerce of the United States of America for leave to intervene, or alternatively, to participate as Amicus Curiae, filed. (20 copies). Certificate or service by mail on October 1, 1971, filed. (Covers 71-1773-5)

10– 8–71 Answer by appellee Teamsters Local Union No. 676, to motion of Chamber of Commerce to intervene, etc., and

Motion to strike and delete from record the affidavit of Professor Herbert Northrup appended to Amicus Curiae brief, filed. (4 copies) Certificate of service attached. (Covers 71-1773-5).

10–15–71 Chamber of Commerce's reply to answer by appellee, Teamsters Local Union No. 676, to motion by Chamber of Commerce motion for leave to intervene, etc., received. (4 copies). Certificate of service attached. (Covers 71-1773-5).

10–20–71 Order (Aldisert, Gibbons and Roseen, Circuit Judges) denying motion by Chamber of Commerce of the United States of America for leave to inter-

vene; granting Chamber of Commerce of the United States leave to file amicus curiae brief; and referring motion by appellee Teamsters Local Union 676, to strike and delete from record the affidavit of Professor Herbert Northrup appended to the Chamber of Commerce amicus curiae brief, for disposition to the panel who will hear the appeal on the merits, filed. (Covers 71-1773-5).

10–20–71 Brief for amicus curiae Chamber of Commerce of the United States of America, received October 2, 1971, filed. (25 copies). (Covers 71-1773-5).

11– 3–71 Submitted on above motion. Clerk.

(See No. 71-1773 for Complete Docket Entries).

IN THE UNITED STATES DISTRICT COURT
For the District of New Jersey

Super Tire Engineering Company; Supercap Corporation; and A. Robert Schaevitz

vs.

Lloyd W. McCorkle, Commissioner of the Department of Institutions and Agencies of the State of New Jersey;

Irving J. Engelman, Director of the Division of Public Welfare of the Department of Institutions and Agencies of the State of New Jersey;

Fred L. Streng, Director of the Camden County, New Jersey Welfare Board; and

Juanita E. Dicks, Welfare Director of the Municipal Welfare Department of the City of Camden, New Jersey.

Civil Action No. 853-71

COMPLAINT.

Count I.

Super Tire Engineering Company and Supercap Corporation

vs.

Lloyd W. McCorkle; Irving J. Engelman; Fred L. Streng; and Juanita A. Dicks

1. Plaintiffs Super Tire Engineering Company and Supercap Corporation are corporations organized and existing under the laws of the State of New Jersey with their principal place

of business located at 7255 Crescent Boulevard, Camden, New Jersey.

2. Plaintiff A. Robert Schaevitz is an individual residing at 300 South Park Drive, Collingswood, Camden County, New Jersey and is a citizen and taxpayer of the United States and of the County of Camden and the State of New Jersey.

3. Defendant Lloyd W. McCorkle is sued herein in his capacity as Commissioner of the Department of Institutions and Agencies of the State of New Jersey; Defendant Irving J. Engelman is sued herein in his capacity as Director of the Division of Public Welfare of the Department of Institutions and Agencies of the State of New Jersey; Defendant Fred L. Streng is sued herein in his capacity as Director of the Camden County, New Jersey Welfare Board; and Defendant Juanita E. Dicks is sued herein in her capacity as Welfare Director of the Municipal Welfare Department of the City of Camden, New Jersey.

4. This action arises under Article VI, Clause 2 of the Constitution of the United States and the Labor-Management Relations Act of 1947, as amended, 29 U. S. C. § 141 *et seq.*, an act of Congress regulating commerce. This Court has jurisdiction of this action pursuant to 28 U. S. C. §§ 1331, 1337 and 2201; the matter in controversy exceeds the sum of $10,000, exclusive of interest and costs.

5. Plaintiff Super Tire Engineering Company is engaged in the business of truck tire sales and service and the manufacture and sale of industrial polyurethane tires and wheels. Plaintiff Supercap Corporation is engaged in the business of truck tire recapping and repairing. Each of said corporate Plaintiffs is engaged in commerce as defined in Section 2(6) of the Labor-Management Relations Act of 1947, as amended, 29 U. S. C. § 152(6). Teamsters Local Union No. 676, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is certified by the National Labor Relations Board as the exclusive collective bar-

gaining representative for all production and maintenance employees employed by each of said corporate Plaintiffs.

6. At midnight on May 14, 1971, upon the expiration of the collective bargaining agreement, which had been in force since May 15, 1968, between Plaintiffs Super Tire Engineering Company and Supercap Corporation and Teamsters Local Union No. 676, all of said Plaintiffs' production and maintenance employees, represented by Teamsters Local Union No. 676, struck Plaintiffs as a result of the parties' failure to reach a new agreement, and said employees have remained out of work in support of their bargaining demands to date.

7. Plaintiffs are informed, believe and therefore aver that subsequent to May 14, 1971, and continuing to date, many of their employees, who are represented by Teamsters Local Union No. 676, and who are directly engaged in and actively participating in the aforesaid economic strike against Plaintiffs, have applied for and have received and, unless Defendants are restrained and enjoined as prayed herein, will continue to apply for and receive public assistance and public welfare benefits under the General Public Assistance Law, N. J. S. A. 44:8-107 *et seq.*, and Assistance for Dependent Children Law, N. J. S. A. 44:10-1 *et seq.*, of the State of New Jersey.

8. Public assistance is available under the General Public Assistance Law, N. J. S. A. 44:8-107 *et seq.*, to needy persons only "* * * where such persons are willing to work but are unable to secure employment due either to physical disability or inability to find employment * * * ." N. J. S. A. 44:8-108-109.

9. Public assistance is available under the Assistance for Dependent Children Law, N. J. S. A. 44:10-1 *et seq.*, to needy dependent children and the parent(s) or relative(s) with whom they are living in accordance with the requirements and restrictions of Sub-Chapter IV of the federal Social Security Act of 1935, as amended, 42 U. S. C. § 601 *et seq.* 42 U. S. C. §§ 602(a)(C), 606(e)(1), and 607(b)(1)(B) provide in

pertinent part that public assistance shall not be available under an approved State plan (here, N. J. S. A. 44:10-1 *et seq.*) where the individual, parent or relative has without good cause terminated his employment or has without good cause refused to accept a bona fide offer of employment in which he or she is able to engage.

10. Despite the express restrictions contained in the General Public Assistance Law, N. J. S. A. 44:8-107 *et seq.*, and the Assistance for Dependent Children Law, N. J. S. A. 44:10-1 *et seq.*, of the State of New Jersey and the federal Social Security Act of 1935, as amended, 42 U. S. C. § 601 *et seq.*, Defendant Lloyd W. McCorkle, as Commissioner of the Department of Institutions and Agencies of the State of New Jersey, has promulgated or caused to be promulgated an interpretative regulation construing the eligibility requirements of the General Public Assistance Law, that all applicants be "* * * persons [who] are willing to work, but are unable to secure employment due either to physical disability or inability to find employment * * *", N. J. S. A. 44:8-108, as including individuals who voluntarily leave their employment for the purpose of directly and actively engaging in and participating in an economic strike against their employer.

11. Plaintiffs are informed, believe and therefore aver that Defendant Lloyd W. McCorkle, as Commissioner of the Department of Institutions and Agencies of the State of New Jersey, has further construed and interpreted the aforesaid interpretative regulation, promulgated under the General Public Assistance Law, as also authorizing the grant of public welfare benefits under the Assistance to Dependent Children Law, N. J. S. A. 44:10-1 *et seq.*, to individuals and the families of individuals who voluntarily leave their employment for the purpose of directly and actively engaging in and participating in an economic strike against their employer.

12. Plaintiffs are informed, believe and therefore aver that Defendant Irving J. Engelman, as Director of the Division of

Public Welfare of the Department of Institutions and Agencies of the State of New Jersey, is charged with the responsibility for the state wide administration and enforcement of the aforesaid interpretative regulation and that, in such capacity, he is currently implementing and executing such regulation through and by means of the county welfare boards and local assistance boards established in the State of New Jersey.

13. The General Public Assistance Law, N. J. S. A. 44:8-107 *et seq.* is administered in and for the City of Camden, New Jersey by Defendant Juanita E. Dicks as Welfare Director of the Municipal Welfare Department of the City of Camden, New Jersey. The manner in which said Statute is administered by Defendant Dicks is typical of the manner in which it is administered by all other Welfare Directors of Municipal Welfare Departments or Local Assistance Boards throughout the State of New Jersey. The Assistance for Dependent Children Law, N. J. S. A. 44:10-1 *et seq.* is administered in and for the County of Camden, New Jersey, by Defendant Fred L. Streng as Director of the Camden County, New Jersey Welfare Board. The manner in which said Statute is administered by Defendant Streng is typical of the manner in which it is administered by all other Directors of County Welfare Boards throughout the State of New Jersey.

14. Plaintiffs believe and therefore aver that the payment by the State of New Jersey through its instrumentalities and political subdivisions, pursuant to the aforesaid interpretative regulation, of public assistance and public welfare benefits to individuals and the families of individuals who voluntarily leave their employment to directly engage in and actively participate in an economic strike against their employer, interferes with and infringes upon free collective bargaining as guaranteed to Plaintiffs by Congress under the Labor-Management Relations Act of 1947, as amended, 29 U. S. C. § 141 *et seq.*; constitutes an intrusion by the State of New Jersey into the field of labor-management relations which Congress has pre-

empted and occupied to the full extent of its powers; and, accordingly, violates Article VI, Clause 2 of the Constitution of the United States.

15. Plaintiffs believe and therefore aver that, unless restrained and enjoined from implementing or giving any effect to the aforesaid interpretative regulation, Defendants Lloyd W. McCorkle and Irving J. Engelman will continue to authorize and direct, and Defendants Fred L. Streng and Juanita E. Dicks will continue to grant and make, public assistance and public welfare payments to those individuals and the families of those individuals, represented by Teamsters Local Union No. 676, who have voluntarily left their employment with Plaintiffs for the purpose of, and who are today, directly and actively engaging in an economic strike against Plaintiffs.

16. Plaintiffs are without an adequate remedy at law and are suffering irreparable injury as a result of Defendants' aforesaid actions.

17. Plaintiffs' employees, represented by Teamsters Local Union No. 676, who are on strike and who have applied for and received, or may apply for and receive, public assistance and public welfare benefits under the aforesaid New Jersey statutes, by virtue of the challenged interpretative regulation, have not been joined by Plaintiffs as parties to this action because such persons are too numerous and because joinder would, in any event, unduly delay the hearing of this action to the irreparable harm of Plaintiffs.

Wherefore, Plaintiffs Super Tire Engineering Company and Supercap Corporation pray that this Court:

(a) Adjudge, decree and declare that the aforesaid interpretative regulation promulgated or caused to be promulgated by Defendant Lloyd W. McCorkle as Commissioner of the Department of Institutions and Agencies of the State of New Jersey is null and void and of no force or effect whatsoever because it constitutes an interference with, and impingement upon, free collective bargaining as guaranteed to Plaintiffs by Congress under the Labor-Management Relations Act of 1947,

as amended, 29 U. S. C. § 141 *et seq.;* because it constitutes an intrusion by the State of New Jersey into the field of labor-management relations which Congress has pre-empted and occupied to the full extent of its powers; and because it, accordingly, violates Article VI, Clause 2 of the Constitution of the United States;

(b) Preliminarily and thereafter permanently enjoin and restrain Defendants Lloyd W. McCorkle, as Commissioner of the Department of Institutions and Agencies of the State of New Jersey, Irving J. Engelman, as Director of the Division of Public Welfare of the Department of Institutions and Agencies of the State of New Jersey, Fred L. Streng, as Director of the Camden County, New Jersey Welfare Board, and Juanita E. Dicks, as Welfare Director of the Municipal Welfare Department of the City of Camden, New Jersey, and any and all persons acting on behalf of any one of the aforesaid Defendants, or on behalf of the State of New Jersey or the County or City of Camden, from giving any force or effect to, authorizing or directing compliance with, or granting or making public assistance or public welfare benefit payments of any nature whatsoever pursuant to or by virtue of, the aforesaid unlawful and invalid interpretative regulation;

(c) Grant to Plaintiffs such other and further relief as this Court shall deem appropriate.

Count II

Super Tire Engineering Company; Supercap Corporation; and A. Robert Schaevitz

v.

Lloyd W. McCorkle; Irving J. Engelman; Fred L. Streng; and Juanita E. Dicks

18. Plaintiffs incorporate herein by reference each and every allegation of paragraphs 1-3, 5-13 and 15-17 of Count I of this Complaint.

19. This action arises under Article VI, Clause 2 of the Constitution of the United States and the Social Security Act of 1935, as amended, 42 U. S. C. § 601 *et seq.* This Court has jurisdiction of this action pursuant to 28 U. S. C. §§ 1331 and 2201; the matter in controversy exceeds the sum of $10,000, exclusive of interest and costs.

20. Plaintiffs believe and therefore aver that the aforesaid interpretative regulation promulgated or caused to be promulgated by Defendant Lloyd W. McCorkle, as Commissioner of the Department of Institutions and Agencies of the State of New Jersey, authorizing the payment of public assistance and public welfare benefits to economic strikers conflicts with and is contrary to Sub-Chapter IV of the Social Security Act of 1935, as amended, 42 U. S. C. §§ 602(a)(C), 606(e)(1) and 607(b)(1)(B); conflicts with and is contrary to the legislative purpose and intent of Congress in enacting Sub-Chapter IV, 42 U. S. C. § 601 *et seq.;* accordingly violates Article VI, Clause 2 of the Constitution of the United States; conflicts with and is contrary to the Assistance to Dependent Children Law of the State of New Jersey, N. J. S. A. 44:10-1 *et seq.*, which as an approved State plan in part funded by the United States must conform with the requirements and restrictions of Sub-Chapter IV of the federal Social Security Act; and conflicts with and is contrary to both the General Public Assistance Law, N. J. S. A. 44:8-107 *et seq.*, and the Unemployment Compensation Act of the State of New Jersey, N. J. S. A. 43:21-1 *et seq.*, the latter of which expressly prohibits payments of benefits to economic strikers.

Wherefore, Plaintiffs Super Tire Engineering Company, Supercap Corporation, and A. Robert Schaevitz pray that this Court:

(a) Adjudge, decree and declare that the aforesaid interpretative regulation promulgated or caused to be promulgated by Defendant Lloyd W. McCorkle, as Commissioner of the Department of Institutions and Agencies of the State of New Jersey,

is null and void and of no force or effect whatsoever because it conflicts with and is contrary to Sub-Chapter IV of the Social Security Act of 1935, as amended, 42 U. S. C. §§ 602(a)(C), 606(e)(1) and 607(b)(1)(B); because it conflicts with and is contrary to the legislative purpose and intent of Congress in enacting Sub-Chapter IV, 42 U. S. C. § 601 *et seq.;* because it violates Article VI, Clause 2 of the Constitution of the United States; because it conflicts with and is contrary to the Assistance to Dependent Children Law of the State of New Jersey, N. J. S. A. 44:10-1 *et seq.;* and because it conflicts with and is contrary to both the General Public Assistance Law, N. J. S. A. 44:8-107 *et seq.*, and the Unemployment Compensation Act, N. J. S. A. 43:21-1 *et seq.*, of the State of New Jersey.

(b) Preliminarily and thereafter permanently enjoin and restrain Defendants Lloyd W. McCorkle, as Commissioner of the Department of Institutions and Agencies of the State of New Jersey, Irving J. Engelman, as Director of the Division of Public Welfare of the Department of Institutions and Agencies of the State of New Jersey, Fred L. Streng, as Director of the Camden County, New Jersey Welfare Board, and Juanita E. Dicks, as Welfare Director of the Municipal Welfare Department of the City of Camden, New Jersey, and any and all persons acting on behalf of any one of the aforesaid Defendants, or on behalf of the State of New Jersey or the County or City of Camden, from giving any force or effect to, authorizing or directing compliance with, or granting or making public assistance or public welfare benefit payments of any nature whatsoever pursuant to or by virtue of, the aforesaid unlawful and invalid interpretative regulation;

(c) Grant to Plaintiffs such other and further relief as this Court shall deem appropriate.

Count III

Super Tire Engineering Company; Supercap Corporation; and A. Robert Schaevitz

vs.

Lloyd W. McCorkle; Irving J. Engelman, Fred L. Streng; and Juanita E. Dicks

21. Plaintiffs incorporate herein by reference each and every allegation of paragraphs 1-3 of Count I of this Complaint.

22. This Court has jurisdiction of this action pendent to the causes of action asserted in Counts I and II of this Complaint.

23. Both the General Public Assistance Law of the State of New Jersey, N. J. S. A. 44:8-107 *et seq.*, and the Assistance to Dependent Children Law of the State of New Jersey, N. J. S. A. 44:10-1 *et seq.*, as the federal Social Security Act of 1935, as amended, 42 U. S. C. § 601 *et seq.*, require:

(a) That a prompt inquiry be made into every applicant's circumstances, resources and income in order to determine financial eligibility, N. J. S. A. 44:1-87, 44:4-82, 44:8-121, 125, 44:10-2-3;

(b) That the applicant, or the parent or relative with whom the dependent child is living, immediately register for work with the State Employment Service and that the applicant and the administering State or local government agency promptly and actively seek to locate employment for such individual, N. J. S. A. 44:1-94, 44:4-86, 87, 44:8-118, 44:10-1-3;

(c) That, thereafter, periodic investigations of every individual receiving public assistance or public welfare benefits be made on a regular basis in order to determine continuing eligibility or a change in circumstances resulting in disqualification, N. J. S. A. 44:4-86, 44:8-118, 127, 44:10-2-3;

(d) That, thereafter, reimbursement be sought by the State or local government administering agency from any recipient

who is found to possess property, real or personal, in excess of that necessary for his or his dependent children's maintenance or support, N. J. S. A. 44:1-95, 44:4-91, 91.2, 44:8-140, 44:10-2, 4.

24. Plaintiffs believe and therefore aver that despite the aforesaid restrictions and requirements of the aforesaid Statutes of New Jersey, neither Defendant Lloyd W. McCorkle, as Commissioner of the Department of Institutions and Agencies of the State of New Jersey, nor Defendant Irving J. Engelman, as Director of the Division of Public Welfare of the Department of Institutions and Agencies of the State of New Jersey, whose duty and legal responsibility it is to require compliance therewith, are enforcing or taking legally adequate measures to assure enforcement of the said statutory restrictions and requirements, in violation of the duties and obligations of their respective offices, and in abuse of any official discretion possessed by them, and that, unless ordered and directed by this Court to do so, said Defendants will continue to ignore or otherwise fail to take those measures necessary to assure proper enforcement of the said statutory restrictions and requirements.

25. Plaintiffs believe and therefore aver that despite the aforesaid restrictions and requirements of the aforesaid Statutes of New Jersey, neither Defendant Fred L. Streng, as Director of the Camden County Welfare Board, nor Defendant Juanita E. Dicks, as Welfare Director of the Municipal Welfare Department of the City of Camden, are properly executing, complying with, or administering the aforesaid statutory restrictions and requirements, in violation of the duties and obligations of their respective offices, and in abuse of any official discretion possessed by them, and that, unless ordered and directed to do so, said Defendants will continue to ignore or otherwise fail

properly to execute, comply with, and administer the said statutory restrictions and requirements.

26. Plaintiffs are without an adequate remedy at law and, as citizens and taxpayers of the County of Camden and State of New Jersey, are suffering irreparable injury as a result of Defendants' aforesaid improper conduct.

Wherefore, Plaintiffs Super Tire Engineering Company, Supercap Corporation and A. Robert Schaevitz pray that this Court:

(a) Issue and grant a preliminary and, thereafter, permanent mandatory injunction ordering and directing Defendant Lloyd W. McCorkle, as Commissioner of the Department of Institutions and Agencies of the State of New Jersey, and Defendant Irving J. Engelman, as Director of the Division of Public Welfare of the Department of Institutions and Agencies of the State of New Jersey, and any and all persons acting on their behalf, to take such action as the Court shall determine necessary to the end that the aforesaid restrictions and requirements contained in the General Public Assistance Law, N. J. S. A. 44:8-107 *et seq.*, and the Assistance to Dependent Children Law, N. J. S. A. 44:10-1 *et seq.*, of the State of New Jersey are enforced and effectuated in conformity with the State legislature's expressed intent;

(b) Issue and grant a preliminary and, thereafter, permanent mandatory injunction ordering and directing Defendant Fred L. Streng, as Director of the Camden County Welfare Board, and Defendant Juanita E. Dicks, as Welfare Director of the Municipal Welfare Department of the City of Camden, and any and all persons acting on their behalf, to execute, comply with, and abide by, the aforesaid restrictions and re-

quirements contained in the General Public Assistance Law, N. J. S. A. 44:8-107 *et seq.*, and the Assistance to Dependent Children Law, N. J. S. A. 44:10-1 *et seq.*, of the State of New Jersey, in their administration of the aforesaid Statutes of New Jersey;

(c) Grant to Plaintiffs such other and further relief as the Court shall deem appropriate.

/s/ Herbert G. Keene, Jr.
Herbert G. Keene, Jr.
Stradley, Ronon, Stevens & Young
1300 Two Girard Plaza
Philadelphia, Pa. 19102
Telephone: 215-LO 9-3800

/s/ David F. Norcross
David F. Norcross
Archer, Greiner, Hunter & Read
518 Market Street
Camden, New Jersey
Telephone: 963-7979

Attorneys for Plaintiffs

Commonwealth of Pennsylvania }
County of Philadelphia }

A. Robert Schaevitz, being duly sworn according to law, deposes and says that he is President and Chief Executive Officer of Super Tire Engineering Company and Supercap Corporation and is one of the Plaintiffs herein and that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, except as to those matters averred on information and belief, and as to such matters, they are true and correct to the best of his information and belief.

/s/ A. Robert Schaevitz
A. Robert Schaevitz

Sworn to and subscribed before me this 9th day of June, 1971.

/s/ Helen M. Schmid
Notary Public

My Commission Expires: May 19, 1975.

IN THE UNITED STATES DISTRICT COURT

* * (Caption—853-71) * *

MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs, Super Tire Engineering Company, Supercap Corporation and A. Robert Schaevitz respectfully move this Court, pursuant to Rule 65, F. R. Civ. P., to issue a Preliminary Injunction, after hearing, against Defendants Lloyd W. McCorkle, Irving J. Engelman, Fred L. Streng and Juanita E. Dicks:

(a) Preliminarily enjoining and restraining Defendant Lloyd W. McCorkle, as Commissioner of the Department of Institutions and Agencies of the State of New Jersey, Defendant Irving J. Engelman, as Director of the Division of Public Welfare of the Department of Institutions and Agencies of the State of New Jersey, Defendant Fred L. Streng, as Director of the Camden County, New Jersey Welfare Board, and Defendant Juanita E. Dicks, as Welfare Director of the Municipal Welfare Department of the City of Camden, New Jersey, and any and all persons acting on behalf of any one of said Defendants, or on behalf of the State of New Jersey or the County or City of Camden, from giving any force or effect to, authorizing or directing compliance with, or granting or making public assistance or public welfare benefit payments of any nature whatsoever, pursuant to or by virtue of, that certain interpretative regulation promulgated or caused to be promulgated by Defendant McCorkle, construing the eligibility requirement of the General Public Assistance Law, N. J. S. A. 44:8-108, that all applicants be " * * * persons [who] are willing to work, but are unable to secure employment due either to physical dis-

ability or inability to find employment * * * ", as including as eligible applicants individuals who voluntarily leave their employment for the purpose of directly and actively engaging in and participating in an economic strike against their employer;

(b) Preliminarily ordering and directing Defendant Lloyd W. McCorkle, as Commissioner of the Department of Institutions and Agencies of the State of New Jersey, and Defendant Irving J. Engelman, as Director of the Division of Public Welfare of the Department of Institutions and Agencies of the State of New Jersey, and any and all persons acting on their behalf, to take such action as the Court shall determine necessary to the end that the restrictions and requirements contained in the General Public Assistance Law, N. J. S. A. 44:8-107 *et seq.*, and the Assistance to Dependent Children Law, N. J. S. A. 44:10-1 *et seq.*, of the State of New Jersey, with regard to (i) initial investigation, N. J. S. A. 44:1-87, 44:4-82, 44:8-121, 125, 44:10-2-3; (ii) securing of employment, N. J. S. A. 44:1-94, 44:4-86, 87, 44:8-118, 44:10-1-3; (iii) continuing periodic investigation, N. J. S. A. 44:4-86, 44:8-118, 127, 44:10-2-3; and (iv) reimbursement, N. J. S. A. 44:1-95, 44:4-91, 91.2, 44:8-140, 44:10-2, 4, are enforced and effectuated in conformity with the State Legislature's express intent;

(c) Preliminarily ordering and directing Defendant Fred L. Streng, as Director of the Camden County Welfare Board, and Defendant Juanita E. Dicks, as Welfare Director of the Municipal Welfare Department of the City of Camden, and any and all persons acting on their behalf, to execute, comply with, and abide by, the restrictions and requirements contained in the General Public Assistance Law, N. J. S. A. 44:8-107 *et seq.*, and the Assistance to Dependent Children Law, N. J. S. A. 44:10-1 *et seq.*, of the State of New Jersey, with reference to

those matters specifically identified by citation in paragraph (b) hereof, in their administration of said statutes of the State of New Jersey.

Respectfully submitted,

/s/ Herbert G. Keene, Jr.
Herbert G. Keene, Jr.
Stradley, Ronon, Stevens & Young
1300 Two Girard Plaza
Philadelphia, Pa. 19102
Telephone: 215-LO 9-3800

/s/ David F. Norcross
David F. Norcross
Archer, Greiner, Hunter & Read
518 Market Street
Camden, New Jersey
Telephone: 963-7979
Attorneys for Plaintiffs

State of New Jersey
County of Camden } ss

AFFIDAVIT

A. Robert Schaevitz, being duly sworn according to law, deposes and says that:

He is President and Chief Executive Officer of Super Tire Engineering Company and Supercap Corporation, is one of the Plaintiffs herein, and is a citizen and taxpayer of the United States and of the County of Camden and the State of New Jersey.

Super Tire Engineering Company and Supercap Corporation are engaged in commerce as defined in Section 2(6) of the Labor-Management Relations Act of 1947, as amended, 29 U. S. C. § 152(6). Teamsters Local Union No. 676, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is certified by the National Labor Relations Board as the exclusive collective bargaining representative for all production and maintenance employees employed by Super Tire Engineering Company and Supercap Corporation.

At midnight on May 14, 1971, upon the expiration of the collective bargaining agreement, which had been in force since May 15, 1968, between Super Tire Engineering Company and Supercap Corporation and Teamsters Local Union No. 676, all the production and maintenance employees employed by Super Tire Engineering Company and Supercap Corporation, and represented by Teamsters Local Union No. 676, struck their employers as a result of the parties' failure to reach a new agreement, and all said employees have remained out of work in support of their bargaining demands to date.

He is informed and believes that subsequent to May 14, 1971, and continuing to date, many of the aforesaid employees, represented by Teamsters Local Union No. 676, who are di-

rectly engaged in and actively participating in the aforesaid economic strike against Super Tire Engineering Company and Supercap Corporation, have applied for and have received, or are about to apply for and receive, public assistance and public welfare benefits under the General Public Assistance Law, N. J. S. A. 44:8-107 *et seq.*, and the Assistance for Dependent Children Law, N. J. S. A. 44:10-1 *et seq.*, of the State of New Jersey.

He is informed and believes that public assistance is available under the General Public Assistance Law, N. J. S. A. 44:8-107 *et seq.*, to needy persons only "* * * where such persons are willing to work but are unable to secure employment due either to physical disability or inability to find employment * * * ."

He is informed and believes that public assistance is available under the Assistance for Dependent Children Law, N. J. S. A. 44:10-1 *et seq.*, to needy dependent children and the parent(s) or relative(s) with whom they are living only where the individual, parent or relative has not without good cause terminated his employment or has not without good cause refused to accept a bona fide offer of employment.

He is informed and believes that, contrary to the aforesaid restrictions contained in the aforesaid Statutes, Defendant Lloyd W. McCorkle, as Commissioner of the Department of Institutions and Agencies of the State of New Jersey, has promulgated or caused to be promulgated an interpretative regulation construing the eligibility requirement of the General Public Assistance Law, that all applicants be "* * * persons [who] are willing to work, but are unable to secure employment due either to physical disability or inability to find employment * * *", N. J. S. A. 44:8-108, as including as eligible applicants individuals who voluntarily leave their employment for the purpose of directly and actively engaging in and participating in an economic strike against their employer.

He is informed and believes that Defendant Lloyd W. McCorkle, in his official capacity, has further construed the said interpretative regulation as also authorizing the grant of public welfare benefits under the Assistance to Dependent Children Law, N. J. S. A. 44:10-1 *et seq.* to individuals and the families of individuals who voluntarily leave their employment for the purpose of directly and actively engaging in and participating in an economic strike against their employer.

He is informed and believes that Defendant Irving J. Engelman, as Director of the Division of Public Welfare of the Department of Institutions and Agencies of the State of New Jersey, is currently implementing and executing such regulation through and by means of the County Welfare Boards and Local Assistance Boards established in the State of New Jersey.

He is informed and believes that the aforesaid interpretative regulation is currently being administered and executed in the City and County of Camden, New Jersey by Defendant Juanita E. Dicks, as Welfare Director of the Municipal Welfare Department of the City of Camden, New Jersey, and by Defendant Fred L. Streng, as Director of the Camden County, New Jersey Welfare Board and that the manner in which said regulation and the aforesaid statutes is administered by Defendants Dicks and Streng is typical of the manner in which they are administered by all other directors of county welfare boards and welfare directors of municipal welfare departments and local assistance boards throughout the State of New Jersey.

Upon the advice of counsel, he believes that the payment by the State of New Jersey through its instrumentalities and political subdivisions, pursuant to the aforesaid interpretative regulation, of public assistance and public welfare benefits to individuals and the families of individuals who voluntarily leave their employment to directly engage in and actively participate in an economic strike against their employer, interferes with and infringes upon free collective bargaining as guaranteed by Congress to Super Tire Engineering Company and Supercap

Corporation and all other employers engaged in or affecting interstate commerce under the Labor-Management Relations Act of 1947, as amended, 29 U. S. C. § 141 *et seq.*; constitutes an intrusion by the State of New Jersey into the field of Labor-Management relations which Congress has preempted and occupied to the full extent of its powers; and, accordingly, violates Article VI, Clause 2 of the Constitution of the United States.

He is informed and believes that, unless restrained and enjoined by this Court from implementing or giving any effect to the aforesaid interpretative regulation, Defendants Lloyd W. McCorkle and Irving J. Engelman will continue to authorize and direct, and Defendants Fred L. Streng and Juanita E. Dicks will continue to grant and make, public assistance and public welfare payments to those individuals and the families of those individuals, represented by Teamsters Local Union No. 676, who have voluntarily left their employment with Super Tire Engineering Company and Supercap Corporation for the purpose of, and who are today, directly and actively engaging in an economic strike against said employers.

He believes that the payment of welfare benefits and public assistance to the striking employees of Super Tire Engineering Company and Supercap Corporation has unquestionably hardened the resolve of the said strikers to remain out of work in support of their bargaining demands; that, as a result thereof, the current strike will undoubtedly be of longer duration than would have otherwise been the case; that the impact of the grant of welfare benefits and public assistance to the strikers involved has resulted in the State of New Jersey subsidizing one party to the current labor dispute; and that such subsidization by the State has resulted in upsetting the economic balance between employer and employees otherwise obtained in such a labor dispute.

As a result of the aforesaid actions of the Defendants, Super Tire Engineering Company and Supercap Corporation are suf-

fering irreparable injury; further, said corporations are without an adequate remedy at law.

He is authorized to take this Affidavit on behalf of both Super Tire Engineering Company and Supercap Corporation.

Upon the advice of counsel, he believes that the payment of public assistance and public welfare benefits to economic strikers conflicts with and is contrary to Sub-Chapter IV of the Social Security Act of 1935, as amended, 42 U. S. C. § 601 *et seq.*; accordingly, violates Article VI, Clause 2 of the Constitution of the United States; and conflicts with and is contrary to the Assistance to Dependent Children Law of the State of New Jersey, N. J. S. A. 44:10-1 *et seq.*, the General Public Assistance Law, N. J. S. A. 44:8-107 *et seq.*, and the Unemployment Compensation Act of the State of New Jersey, N. J. S. A. 43:21-1 *et seq.*

He believes that the restrictions and requirements contained in the General Public Assistance Law of the State of New Jersey, N. J. S. A. 44:8-107 *et seq.* and the Assistance to Dependent Children Law of the State of New Jersey, N. J. S. A. 44:10-1 *et seq.* with reference to initial investigation, location of employment, continuing periodic investigation, and reimbursement, which provisions are more specifically set forth in the Complaint herein, are not properly being enforced by appropriate and adequate measures by either Defendant Lloyd W. McCorkle or Defendant Irving J. Engelman, in violation of the duties and obligations of their respective offices and that, unless ordered and directed by this Court to do so, said Defendants will continue to fail to properly and adequately enforce such statutory restrictions and requirements.

He further believes that neither Defendant Fred L. Streng nor Defendant Juanita E. Dicks are properly executing, complying with or administering the same statutory restrictions and requirements, more specifically enumerated in the Complaint, in violation of the duties and obligations of their respective

offices and that, unless ordered and directed to do so by this Court, said Defendants will continue to fail properly to execute, comply with and administer such statutory restrictions and requirements.

He, as well as Super Tire Engineering Company and Supercap Corporation, are without adequate remedy at law and, as citizens and taxpayers of the United States and of the County of Camden and of the State of New Jersey, are suffering irreparable injury as a result of the Defendants' aforesaid action and inaction.

The facts set forth herein are true and correct to the best of his knowledge except as to those matters asserted on information and belief and with respect to those matters, they are true and correct to the best of his information and belief.

/s/ A. Robert Schaevitz
A. Robert Schaevitz

Sworn to and subscribed before me this 10th day of June, 1971.

/s/ Ruth Norwitz
Notary Public

My Commission Expires: 9/28/75.

IN THE UNITED STATES DISTRICT COURT

• • (Caption—853-71) • •

ORDER

And Now, this 14th day of June, 1971, it is hereby Ordered that hearing be held before the Court on Plaintiffs' Motion for a Preliminary Injunction herein on the 24th day of June, 1971 at 10:00 A. M. in Court Room 2, United States Court House, 401 Market Street, Camden, New Jersey.

/s/ John J. Kitchen
U. S. D. J.

UNITED STATES DISTRICT COURT

* * (Caption—853-71) * *

Before:

Honorable John J. Kitchen, U. S. D. J.

Appearances:

Archer, Greiner, Hunter & Read, Esqs.,
By: David F. Norcross, Esq.,

Stradley, Ronon, Stevens & Young, Esqs.
By: Herbert G. Keene, Jr., Esq.,
Attorneys for Plaintiffs,

Plone, Tomar, Parks & Seliger, Esqs.,
By: Robert F. O'Brien, Esq.,
Attorney for Defendant Intervenor Teamsters Local 676

Daly D. E. Temchine, Esq.,
Attorney for Defendants McCorkle and Engelman

William D. Dilks, Esq.,
Attorney for Defendant Director of Welfare of Camden County.

Isaih Steinberg, Esq.,
Attorney for Defendant Director of Welfare of Municipal Welfare Department of the City of Camden.

Dorothy C. Pavlik Boss
Certified Shorthand Reporter

[3] The Court: Gentlemen, this is the return day for a hearing on motion by the plaintiffs, Super Tire Engineering Company and others versus Lloyd W. McCorkle, et als. for preliminary injunction; civil action 853-71. Are we ready to proceed?

Mr. O'Brien: Yes, your Honor.

The Court: Gentlemen, I understand we have some motions before we proceed. Is that correct?

Mr. Temchine: Yes, sir.

Mr. O'Brien: My name is Robert F. O'Brien, and I think, we should have it on the record, we represent the applicant intervener, Teamsters Local 676, which will be affected by the results of any decision here. We would formally move at this time to intervene, your Honor.

The Court: All right. We have discussed that and there is no objection. Your motion is granted.

Now, what other motions do we have?

Mr. Temchine: Your Honor, my name is Daly Temchine and I am here on behalf of the defendants McCorkle and Engelman. I [4] would like at this time to make a motion to dismiss on the grounds that this complaint does not state a cause of action cognizable before this Court, specifically under its jurisdiction of 28 U. S. C. Section 1337, which gives this Court original jurisdiction over causes arising under statutes relating to commerce, is not applicable to this case, because, in fact, this cause arises under the Social Security Act and not under the N. L. R. A.

The Court: Any other motions, Gentlemen?

Mr. O'Brien: Before any testimony is presented, we believe this case is not one, which is properly before this Court at this time. Your Honor, we have reference to a case of I. T. T. versus Minter, which has come out of the First Circuit in December, 1970. That case, your Honor, we think is dispositive of the claim, which is put before you by the plaintiff. What plaintiff is seeking here is the taking of testimony on this particular point as to the conflict between State action insofar as it would interfere or upset the balance, [5] as supposedly set down in the Federal statutes. We believe, your Honor, that this I. T. T. case is dispositive of the entire matter.

The Court there, Judge Coffin speaks of the particular forum where certain things should be developed. The particular forum, which Judge Coffin talks about in that case is the forum of Congress. The Judge in the case sets out a series of criteria, which should be considered by a Court or by an adjudicatory body setting out those criteria. He then goes out to point out that the Congress itself would be in the best position to decide the type of issue, which is raised. I believe, it would be unfair—it is not fair to come into here and ask the Court today to take testimony under the particular subject matter of a State-Federal conflict, when in fact, this Court is not the forum to hear this type case to begin with. Additionally, your Honor, even if we were going to go into the merits of the case, I think, it is clear on its face, without the taking of any testimony, that the State [6] here has a legitimate interest in protecting its inhabitants from destitution and as such, the State should not even be forced to litigate its actions here, in providing welfare assistance to people who are needy. The fact that they are on strike, we believe, your Honor, does not deprive them of the benefits, which they should be entitled to. And to get into the balancing test, which Judge Coffin talks about, in the First Circuit Court, we believe, would clearly show—and I think just looking at the pleadings in this case, it is clearly seen that the balancing would weigh in favor of the State. The State should not be second guessed. We think, the complaint itself shows that the people cannot be granted any relief. The complaint talks about a conflict between State and Federal laws; while I think, that's clearly disposed of in the First Circuit Court opinion, wherein the First Circuit points out, there is no conflict here, that the State action is peripheral here for the federal scheme. The federal scheme sets [7] out certain labor statutes, which labor statutes define the conduct of the parties at the bargaining table and the conduct of the parties on the labor dispute. However, the State is allowed to interfere. The interfering with the labor, New Jersey has an anti injunction, in which New Jersey always becomes involved in a labor dispute.

I would submit, that is much more the heart of the matter and yet, that State action has never been said, that that State action is interference or is pre-empted by the federal scheme.

We'd also point out to the Court, that we believe that this entire matter concerning welfare benefits has been mooted we can represent to the Court and put in through competent testimony that, in fact, these employees voted to return to work and are scheduled to return to work tomorrow morning. What this complaint complains about is the payment of welfare benefits. Well, that's no longer a fact. Welfare benefits are no longer to be paid. In fact, they will be stopped. Any money [8] which these employees will receive, will be returned to the welfare department. So that the harm that's complained here by the plaintiff is one, which has been abrogated by the return to work. And we believe, that the question, therefore, would be mooted simply on this ground alone. The Norris LaGuardia Act, which is an underpinning of the federal policy against injunctions, that act states very clearly, that no injunction shall issue in any case arising out of a labor dispute. And Norris LaGuardia here forbids the type of relief, which is being sought by the plaintiff. The plaintiff here has no right to an injunction under the terms of Norris LaGuardia. This is a labor dispute; and to issue an injunction in a case, which arises or has its underpinning in a labor dispute, would violate that act. For all these reasons, your Honor, we would submit, that this case is one that can be disposed of on motion. I think, any of the motions, which we have cited to the Court, would make this [9] case to be disposed of for this Court.

Now, to entertain testimony on the plaintiff's motion, we believe is not fair to the Court, to take up the time and efforts and energy of the Court in hearing testimony, which should not properly be before the Court. These witnesses here should be before Congress, testifying before Congress. If Congress has any power in this matter, they are the ones, which should be exercising it to begin with if there is any State—Federal conflict.

But to take the time, take the energy of this Court, to weigh all the considerations, which are set out in Judge Coffin's opinion, is unfair, when Judge Coffin goes on in that opinion and says quite clearly, Congress is the forum. We would, therefore, ask that our motion to dismiss be granted.

The Court: Is there anything, Mr. O'Brien, in any of the regulations of Congress, which would prohibit the payment of welfare under circumstances such as this?

[10] Mr. O' Brien: The enabling act from what I understand, Social Security, which allows the monies to flow into the State, talks about good cause. But there's nothing in the statute, which defines good cause. Then, we get into the question, what is or is not good cause? Then, the First Circuit had the exact same question, whether or not an employee when he's left his employ, has left it for good cause? The First Circuit disposed of it by saying it is up to the State to ascertain good cause. Now from my understanding of the State policy, your Honor, the State sometimes finds that an individual is not eligible for welfare benefits if he is participating in an unlawful strike, a strike which has been declared by a Court to be a wild—cat or something in violation of collective bargaining agreement. There, the State would step in, make its finding under State law, that good cause was not present here when the employee left work. And, therefore, denied the employee the benefits. But here, this is a lawful strike, an economic strike at the expiration of a contract; and as [11] such, we would submit to the Court, that at this point there is no showing that there was not good cause when these people left work.

Mr. Temchine: I would like to add some additional points. Firstly, if there is any conflict involved in, this case is not a conflict between the State and Federal government it is a conflict between two federal statutes, the Social Security Act and the National Labor Relations Act and that is evidenced by the fact that the Social Security Act in it's welfare program is administered by the Department of Health, Education and Welfare.

Every single State, which participates in federal welfare programs, must submit a plan to H. E. W. the New Jersey plan, which includes the regulations which permit the collecting of welfare benefits to strikers was to submit to H. E. W.; and H. E. W. approved the State's plan. If we need any further indication that the federal government permits the collection of welfare [12] type benefits to strikers, it may be found in the Food Stamp Program, which is administered by the Department of Agriculture. Recently, in the Newark Teacher's strike, the question arose whether they were entitled to the food stamps. Communications were had with the Department of Agriculture and it was indicated to us, any striker, any one who is needy, qualified for food stamps.

Now as I say, this is a federal policy. If there is a conflict, it is between one federal statute and another and the Court is at a disadvantage, not having the participation of the Federal Government, should it choose to decide this issue and should it conclude the I. T. T. versus Minter, is not dispositive of the present course of action, which we feel it is.

The Court: Mr. Dilks, do you have anything you want to say?

Mr. Dilks: No, your Honor. We, on behalf of the Director of Welfare of Camden County, of course, we follow the mandates that come down from the Director of Welfare of the State of New [13] Jersey and we would join in the motions that have been made by both counsel and, of course, we will abide by whatever decision this Court renders with respect to the State of New Jersey; and we will abide whatever mandate comes from their office.

The Court: Mr. Steinberg.

Mr. Steinberg: Our position is essentially the same as Mr. Dilks. We administer welfare on behalf of the city, and in accordance with the statutes of the State of New Jersey and regulations promulgated by the Department of Institutions and Agencies of the State of New Jersey; and we are willing to abide

by any determination this Court might make with respect to the application of the plaintiffs.

The Court: Mr. Keene.

Mr. Keene: If I can reply briefly, I think Mr. O'Brien rather collectively (sic) [selectively] takes those portions of the I. T. T. case and Almacs case out of the District Court of Rhode Island, which I choose (sic) [he chooses] to rely on and very carefully ignoring other portions of those opinions that go against him. [14] For instance, I am rather familar with the I. T. T. case. Taking Mr. O'Brien's first point, the Court in that case indicates that a balancing approach to this question is the correct approach and quoting the Court's opinion, Judge Coffin said, "a Court would be interested in how many States permit strikers welfare." What's the impact of welfare on the collective bargaining situation? Any studies or expert testimony evaluating the impact of the eligibility—and I am here today prepared to introduce testimony on those issues as enumerated by Judge Coffin. Secondly, Mr. O'Brien refers to the fact that the strike was ended as of yesterday in that our latest contract was ratified by the Union Membership yesterday and they plan a return to work tomorrow. But what Mr. O'Brien apparently ignores is that that very same issue was presented to the First Circuit in the I. T. T. case and the First Circuit said, this was a question of recurring importance to the public and that a mere fact that the strike had been discontinued or [15] ended, would not moot the issue.

Mr. O'Brien then refers to the Norris LaGuardia Act in the State of New Jersey and says, this is a labor dispute and we can't issue an injunction in this kind of a case. That's not quite so either. If you take a look at the Almacs Case out of the District Court of Rhode Island, Judge Pettine indicates, neither the Federal Norris LaGuardia Act nor the various little Norris Acts in the State prevented an injunction from issuing in this kind of a case, because we were not enjoining a party to a labor dispute from doing anything. What we are seeking is an injunction against State officials, not a party to the labor dispute. Now, the

statute in New Jersey under which the particular regulation that's an issue was promulgated is not the statute that was enacted under the Federal Social Security Act. It is the General Assistance statute of the State of New Jersey, which is wholly State, County and Local, locally funded and the precise language contained in that [16] statute, is that public assistance is assistance rendered to needy persons not otherwise provided for under the laws of this State where such persons are willing to work, but are unable to secure employment, but (sic) [due] either to physical disability or inability to find employment. Our argument here today, is that they were not physically disabled and they were not without employment. They had it. The only reason why they chose not to accept it, was because they wanted better working terms and conditions.

The Court: What about the statement in the I. T. T. Case, Mr. Keene, dealing with whether there was fault or whether there was good cause for being absent and who makes that decision as far as whether welfare is to be given?

Mr. Keene: That question, your Honor, arises under the Aid to Dependent Children Act enacted by the State under the Federal Social Security Act. The Federal Social Security Act says that welfare will not be made available to anyone whose terminated [17] his employment within thirty days of the application or anyone who has, within that period of time, refused a bonafide offer of employment.

Now, the New Jersey Aid to Dependent Children Law enacted pursuant to that Federal statute, contains the precise same language. The First circuit indicated, that the mere refusal to go to work because you went out on an economic strike was not equivalent to saying, you have refused a bonafied offer of employment. By the same token, the First Circuit indicated that the converse wasn't true either. The fact that you went out on strike may or may not be good cause for refusing employment. I don't believe that the First Circuit really answered that question. It seemed to say, that each argument assumes the conclusion

that it is either a good cause or not good cause for not going to work, i.e., going out on strike. But the First Circuit I don't really believe precisely answered that question.

Our position here today is that the regulation that we are challenging was issued [18] under the General Assistance Law of the State of New Jersey. It's now been applied to the Aid to Dependent Children Program and it does conflict with both the General Assistance Laws as well as the Aid to Dependent Children Program of the State of New Jersey and the Federal Social Security Act.

I might also say in response to something that Mr. Temchine said, that jurisdiction is not founded under Federal Social Security Act, under count one of our complaint. It is, in fact, founded in the Labor Management Relations Act. The second count is founded in Federal jurisdiction on the Social Security Act, but not the first. Also, in reply to something else, which I believe, Mr. Temchine did touch on, I don't believe that the conflict is between Federal statutes. I think, reading the Federal Social Security Act fairly, it is completely consistent with the Labor Management Relations Act. The people have the absolute right to go out on strike, but they don't have a right to [19] receive welfare. The inconsistency develops when a State administrator then interprets his State plan as to permit the granting of welfare benefits to economic strikers. So, I am not challenging any inconsistency that might, in any event, appear between Federal statutes. What I am challenging is the State's interference with free collective bargaining number one; and secondly I am saying that the regulations violate the Federal Social Security Act and the other enactments of the State of New Jersey, the General Assistance Law and the Unemployment Compensation Law.

I might also call to your Honor's attention, the fact that as of July one, of this year, there is a new welfare statute that will be applicable in this State of New Jersey and that is to be known as Assistance to the Families of the Working Poor. That Act spe-

cifically provides in Section Three A, that where the absence or insufficiency of income or resources of an applicant is the result of a voluntary cessation of employment within 90 days prior [20] to the date of the application; that in that event, that applicant is not eligible and that is something of a change of the language between this new statute and the old statute. So, I think that the intent of Legislature of the State of New Jersey has recently been manifested in this new enactment.

The Court: Gentlemen, I am going to take a short recess and I am going to review that I. T. T. Case in view of your statements, at which time I will return and make the rulings on the motions.

(Court recessed.)

The Court: Gentlemen, as I understood our discussion before we came into Court, there was a desire to have this determined on the merits at this time. Is that right, Mr. Keene?

Mr. Keene: Yes.

The Court: Consolidated with the request for the injunction and so forth?

Mr. Keene: That's correct, sir.

The Court: Gentlemen, I have read for I don't know how many times, but I [21] have read again this I. T. T. Case, which has been referred to; and on the basis of that, the Court has determined not to take testimony. I accept the ruling of Judge Coffin's opinion in that case and I feel that that case, as I interpret it, is controlling, because I feel that any action in this matter such as those enumerated in the case and in which they said, they are going to be recovering, I feel, that such rulings or such testimony should be heard by Congress for whatever action they deem appropriate. On that basis, I am going to grant the motion to dismiss and of course, that will deny the injunction.

Mr. O'Brien, will you prepare the order since it is basically your motion.

(Whereupon the hearing was concluded.)

IN THE UNITED STATES DISTRICT COURT

* * (Caption—853-71) * *

This matter having come on for Final Hearing on the merits pursuant to F. R. C. P. 65(a)(2) on June 24, 1971;

And the Court having heard oral argument by counsel for all parties hereto;

And based upon existing law and for other good cause shown;

It is on this 13th day of July, 1971, Ordered that plaintiffs' Motion for Preliminary Injunction be and the same hereby is dismissed;

It is Further Ordered that the Complaint filed in this matter be and the same hereby is dismissed without costs.

/s/ John J. Kitchen
John J. Kitchen,
J. U. S. D. C.

July 13, 1971

UNITED STATES COURT OF APPEALS
For the Third Circuit

Super Tire Engineering Company; Supercap Corporation: and A. Robert Schaevitz,

Appellants,

vs.

Lloyd W. McCorkle, Commissioner of the Department of Institutions and Agencies of the State of New Jersey; Irving J. Engelman, Director of the Division of Public Welfare of the Department of Institutions and Agencies of the State of New Jersey; Fred L. Streng, Director of the Camden County, New Jersey, Welfare Board; Juanita E. Dicks, Welfare Director of the Municipal Welfare Department of the City of Camden, New Jersey; Intervenor Defendant: Teamsters Local Union No. 676, Affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,

Appellees.

Appeal from the Judgment of the United States District Court for the District of New Jersey.

Nos. 71-1773, 71-1774 and 71-1775.

Argued September 14, 1972.

Before McLAUGHLIN, ADAMS and GIBBONS, *Circuit Judges.*

OPINION OF THE COURT

(Filed November 22, 1972)

ADAMS, *Circuit Judge.*

In this case, appellants claim three New Jersey welfare programs[1] that provide benefits to certain striking workers, violate the federal constitution, federal statutes and state statutes. Appellants,[2] alleging that their employees while engaged in an economic strike received aid under the challenged programs, sought an injunction restraining various New Jersey officials, appellees here,[3] from continuing to provide payments to the workers under these programs.

It is forcefully contended that these welfare programs directly interfere with free collective bargaining, a federal policy enunciated in the Labor Acts, 29 U. S. C. §§ 157-8, and are unconstitutional because they contravene the Supremacy Clause of the U. S. Constitution. They further assert that the inclusion of striking employees in the programs abridges the federal statute under which one of the programs is funded,[4] and the New Jersey

1. There has been considerable confusion over which welfare programs New Jersey currently operates. From oral argument and subsequent memoranda it appears that appellants are challenging the following three programs: Aid for Dependent Children (A. F. D. C.), N. J. S. A. 44:10-1 *et seq.*, a joint state-federal program; Aid to Families of the Working Poor, N. J. S. A. 44:13-1 *et seq.*, a state program; General Public Assistance, N. J. S. A. 44:8-107 *et seq.*, a state program.

2. Appellants, Super Tire Engineering Company and Supercap Corporation, are New Jersey corporations; appellant, A. Robert Schaevitz, is a citizen of and taxpayer of New Jersey, as well as president and chief executive officer of appellant corporations.

3. The Teamsters Local Union No. 676, the certified collective bargaining representative for all production and maintenance employees of the corporate-appellants, was granted permission by the District Court to intervene on behalf of the defendant-appellees.

4. A. F. D. C. is a joint federal-state program created by § 402 of the Social Security Act, 42 U. S. C. § 602.

statutes pursuant to which the state officials have promulgated regulations affecting striking employees.[5]

Critical to our disposition of the case, is the sequence of events. On May 14, 1971, at the conclusion of a three-year contract, negotiations having been to that point unfruitful, the employees began an economic strike. Shortly thereafter, as the employers allege, certain of the employees sought public assistance under one of the specific welfare programs. On June 10, 1971, the complaint giving rise to this litigation was filed, and on June 14 the District Court ordered that a hearing on the request for a preliminary injunction be held on June 24.[5a] At that hearing the state officials and the union moved to dismiss the employers' complaint pursuant to Rule 12b(6), F. R. Civ. P. The trial judge, persuaded by I. T. T. Lamp Division v. Minter, 435 F. 2d 989 (1st Cir. 1970), *cert. denied*, 402 U. S. 933, *rehearing denied*, 404 U. S. 874 (1971), on July 13 dismissed the complaint and the motion for a preliminary injunction.

The union states that the strike "ended immediately prior to the June 24, 1971 hearing." The employers allege that the "employees did not return to work until June 28, 1971." Under either factual situation, a new contract having been accepted and ratified,[5b] it is clear that the labor dispute undergirding this

5. The question whether the regulations governing each of the programs comport with the New Jersey statute under which they are promulgated is one of state law. Resolution of that issue might render unnecessary a decision on the basic constitutional challenges. In such circumstances, it is normally the duty of federal courts to abstain, awaiting a definitive pronouncement from a state court on questions of state law. We do not address this issue because it would not be reached until the Court determines that the case is within its jurisdiction. Railroad Commission v. Pullman Co., 312 U. S. 496 (1941).

5a. The jurisdiction of the District Court was alleged to be grounded on 28 U. S. C. § 1331 and § 1337. The applicability of § 1337 need not be discussed, for, it appearing that the amount in controversy exceeds $10,000, jurisdiction can be based on § 1331.

5b. At the hearing before the District Court on plaintiffs' motion for a preliminary injunction, the transcript of which appears as pages 52a-72a of the appendix filed by plaintiff-appellants, counsel for the plaintiffs stated:

challenge to the New Jersey programs had been concluded before the trial judge dismissed the action and long before appeals were filed or argued in this Court.

Although many important questions of law have been ably argued and briefed by both sides, it now appears to this Court that the resolution of the underlying labor dispute raises squarely the issue of mootness.

I.

Article III of the Constitution commands that the federal judicial power shall extend only to cases and controversies. Thus, lacking a case or controversy, the federal courts are without jurisdiction. In North Carolina v. Rice, 404 U. S. 244 (1971), the Supreme Court states explicitly that mootness is an article III jurisdictional issue, setting forth the fundamental considerations:

> "Although neither party has urged that this case is moot, resolution of the question is essential if federal courts are to function within their constitutional sphere of authority. Early in its history, this Court held that it had no power to issue advisory opinions, Hayburn's Case, 2 Dall. 409 (1792), as interpreted in Muskrat v. United States, 219 U. S. 346, 351-353 (1911), and it has frequently repeated that federal courts are without power to decide questions that cannot affect the rights of litigants in the case before them. Oil Workers Unions v. Missouri, 361 U. S. 363, 367 (1960). To be cognizable in a federal court, a suit 'must be definite and concrete, touching the legal relations of parties having adverse legal interests. . . . It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.' Aetna Life Ins. Co. v.

". . . the strike was ended as of yesterday in that our latest contract was ratified by the Union Membership yesterday and they plan a return to work tomorrow." Appendix at 65a.

> Haworth, 300 U. S. 227, 240-41 (1937). However, '[m]oot questions require no answer.' Missouri, Kansas & Texas R. Co. v. Ferris, 179 U. S. 602, 606 (1900). Mootness is a jurisdictional question because the Court 'is not empowered to decide moot questions or abstract propositions.' United States v. Alaska S. S. Co., 253 U. S. 113, 116 (1920), quoting California v. San Pablo & Tulare R. Co., 149 U. S. 308, 314 (1893); our impotence 'to review moot cases derives from the requirement of Article III of the Constitution under which the exercise of judicial power depends upon the existence of a case or controversy.' Liner v. Jafco, Inc., 375 U. S. 301, 306 n. 3 (1964). See also Powell v. McCormack, 395 U. S. 486, 496 n. 7 (1969). Even in cases arising in the state courts, the question of mootness is a federal one which a federal court must resolve before it assumes jurisdiction. Henry v. Mississippi, 379 U. S. 443, 447 (1965). Liner v. Jafco, Inc., supra, at 304." 404 U. S. at 246.

Beyond these dictates, however, broad statements about mootness suffer the same infirmity as general discussions about most abstruse subjects.[6] Though mootness is a constitutional problem, an articulation of the specific parameters of the doctrine has never been assayed by the Supreme Court.[7] Rather, the doctrine of mootness is protean in nature, assuming different shapes at different times. Indeed, the recent cases confronting the issue would appear not to produce a unitary coherent line.

The problem of mootness presents a recurring refrain in several types of cases. Analysis of them reveals four concerns

6. In Association of Data Processing Service Organizations, Inc. v. Camp, 397 U. S. 150 (1970), Justice Douglas ascribed to discussions of standing a quality equally applicable to discussions of mootness. "Generalizations about standing to sue are largely worthless as such." *Id.* at 151.

7. *See generally*, Note, Mootness on Appeal in the Supreme Court, 83 Harv. L. Rev. 1672 (1970); Note, Cases Moot on Appeal: A Limit on the Judicial Power, 103 U. Pa. L. Rev. 772 (1955).

that the Supreme Court addresses in terms of mootness. They are: that some sort of judicial decree be possible, that the parties remain in a posture sufficiently adverse to insure effective litigation, that the issue in contention continue to be concrete, and that the issue not be one that will recur and yet be unreviewable. Beyond these observations, however, conclusions become difficult. This difficulty is at least in part attributable to the proximity of mootness to several other justiciability precepts, and the tendency of courts to become unclear as to just which doctrine is applicable. For example, the concern with sufficient adversity is related to the question of "standing," and the fear regarding loss of concreteness approaches ripeness. Further beclouding the problem is the seeming congruence, at times, of the jurisdictional requirements for declaratory judgments and the mootness doctrine. *See e.g.*, Golden v. Zwickler, 394 U. S. 103 (1969). In spite of the impediments involved in attempting to draw conclusions about the content of the mootness doctrine, the resolution of this case requires that the concerns to which mootness responds be developed.

The early mootness cases were bottomed on the Court's unwillingness to act unless it could issue a decree that would affect the legal rights of the parties to the litigation. There frequently was no discussion of the underpinning of the concept, but it is clear that the Court considered that the phrase "judicial power" encompassed situations only in which an effective decree could be rendered, or that such a situation was not a "case" or "controversy." In Singer Manufacturing Co. v. Wright, 141 U. S. 696 (1891), a Georgia tax was alleged to discriminate impermissibly between two classes of retailers. Singer brought suit to enjoin collection of the tax as levied against it. Before the appeal reached the Supreme Court, Singer, still pursuing the litigation, paid the tax. Although acknowledging that an action for restitution, which would raise the same issues, might lie, the Supreme Court dismissed the case as moot because nothing remained to be enjoined. *See*, Commercial Cable Co. v. Bur-

leson, 250 U. S. 360 (1919). *See generally,* Note, Mootness on Appeal in the Supreme Court, 83 Harv. L. Rev. 1672, 1674-5 (1970).

Much of the recent motion in the mootness field has occurred in cases involving convicted criminals who have been released from prison. The leading cases, separated by twenty-five years, illustrate the Court's shift from emphasis on an effective decree to a more functional approach in the context of a criminal situation, looking for sufficient interest and adversity between the parties. Both St. Pierre v. United States, 319 U. S. 41 (1943), and Sibron v. New York, 392 U. S. 40 (1968), were challenges brought by persons whose prison terms had been completed. In *St. Pierre,* the court dismissed as moot, stating:

> "On the argument it was conceded that petitioner had fully served his sentence before certiorari was granted. We are of opinion that the case is moot because, after petitioner's service of his sentence and its expiration, there was no longer a subject matter on which the judgment of this Court could operate. A federal court is without power to decide moot questions or to give advisory opinions which cannot affect the rights of the litigants in the case before it. United States v. Alaska S. S. Co., 253 U. S. 113, 115-16, and cases cited; United States v. Hamburg-American Co., 239 U. S. 466, 475-77." 319 U. S. at 42.

See Parker v. Ellis, 362 U. S. 574 (1960). *Sibron,* however, was not held to be moot because, as the Court asserted, the brevity of the sentence made review before release impossible, and the enduring effects of the conviction assured that Sibron would diligently litigate the question, and in a concrete factual context. *See* Mancusi v. Stubbs, 408 U. S. 204 (1972). A lack of concreteness seemed the motivation for a finding of mootness in North Carolina v. Rice, *supra. See* Aikens v. California, 406 U. S. 813 (1972).

Another group of cases includes those in which something other than the passage of time creates the mootness problem.[8] This class of cases involves changed circumstances or voluntary cessation of a questioned activity. Thus, changing conditions have at times led to an invocation of the mootness doctrine. In Two Guys From Harrison-Allentown, Inc. v. McGinley, 366 U. S. 582 (1961), the enactment of an amendment to a Sunday-closing statute, plus the election of a new prosecutor were held to moot an assault on the "Blue Laws." In Golden v. Zwickler, *supra*, Zwickler was challenging a New York statute prohibiting the distribution of anonymous handbills. The handbills he desired to distribute attacked Congressman Multer, an incumbent running for reelection in 1964. Before the case was heard by the U. S. Supreme Court, Multer had become a Justice of the Supreme Court of New York. His target thus having been removed from active politics and unlikely to reappear, Zwickler's appeal was held not to be justiciable any longer.[9] These two cases exemplify the Court's concern both with the concreteness of the controversy and the continuing adverse nature of the parties. The same elements seem to be operative in SEC v. Medical Committee for Human Rights, 404 U. S. 403 (1972), where the ruling of the Commission that Dow need not include an anti-napalm proposal in its 1968 proxy solicitations was held no longer reviewable. The finding of mootness was based on Dow's voluntary inclusion of the proposal in its 1971 solicitation, the less-than-3% support that the proposal received at that time, and SEC regulations which permitted Dow to delete for three years a proposal with such limited support.[9a]

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8. Cases dealing with elections that have taken place, orders that have expired before review, and injunctions that have lapsed, discussed *infra*, are a third type of case in which mootness occurs.

9. As discussed earlier, Golden v. Zwickler, *supra*, is not technically a mootness case but one poing a problem under the declaratory judgment act. Nevertheless, it is frequently cited as a mootness case.

9a. *See* Johnson v. New York State Educ. Dep't, 41 U. S. L. W. 4018 (U. S. Nov. 20, 1972).

The most frequently quoted cases of the voluntary cessation type are United States v. W. T. Grant & Co., 345 U. S. 629 (1953) and United States v. Trans-Missouri Freight Assn., 166 U. S. 290 (1897). Both involved conduct by defendants claimed to be in violation of the antitrust laws. The defendants, in each case, ceasing the allegedly illegal activity, urged that the proceedings brought by the government had thus become moot. In each case the Court, looking to the public interest in enforcement of the antitrust law, and the possibility that the defendants might repeat the questioned activity, held that the cases were not moot. The decisive considerations in *Grant* and *Trans-Missouri* are not as clear as in some other mootness cases. Nevertheless, the interest of the government in seeing that its laws not be evaded by the practice of ceasing questioned activity when challenged, assure that the government will be an active litigant. The fact that the questionable activity was being conducted at the start of the litigation appeared to aid the Court by providing a concrete controversy.

Another line of cases dealing with mootness is comprised of those in which the passage of time has caused the immediate object of the litigation to become unobtainable. Typical are disputes that in some way challenge election laws. In these cases a private citizen is the plaintiff and the government is the defendant. The mootness problem arises because the election has passed. Three cases in which this issue appeared have been held moot, Brockington v. Rhodes, 396 U. S. 41 (1969); Hall v. Beals, 396 U. S. 45 (1969); and Socialist Labor Party v. Gilligan, 406 U. S. 583 (1972). *Brockington* was a suit brought by a would-be candidate for Congress seeking a writ requiring the election board to list his name on the ballot, a step the board had refused to take since the nominating petitions filed by the aspirant were short of the required number of signatures. The Supreme Court stated that because the election was passed, the case was moot since the only relief sought was now unavailing. *Brockington* would appear to be a return, perhaps anachronistically, to the "effective decree" standard.

Hall was a challenge to Colorado's six-month residency requirement for voting. An amendment to the statute reducing the requirement to two months, and the passage of the election were held to moot the appeal. Since the amendment reducing the residency requirement would have permitted the plaintiffs to vote, and, they would be eligible to vote in the next election, this case is perhaps explained as a decision based on a lack of adversity.

In *Socialist Labor Party* the statute attacked as unconstitutional was amended, correcting many of the infirmities that had been alleged by the plaintiffs. The Socialist Labor Party attempted to keep their suit alive by pointing to an unamended oath provision. The Court, finding that the heart of the suit had been removed, refused to permit it to be pursued on this tangential issue.[10]

A greater number of cases wherein the election has passed have been held not moot. In Gray v. Sanders, 372 U. S. 368 (1963), Georgia's county-unit primary system was assailed. Though the use of the specific system had been enjoined in the district court, and the Democratic Party, whose primary was the one challenged, actually held the election on a popular basis, the Supreme Court did not find the case moot. The Court stated two reasons for proceeding to the merits. First, the district court's injunction regulated only the present election, and dismissal of the case would restore Georgia to the *status quo ante*, i.e., able to conduct future elections under the county-unit system. Second, citing United States v. W. T. Grant, *supra*, the Court held that the Democrats' voluntary abstention from the challenged activity did not guarantee such restraint in the next election. Though nowhere so articulated, this approach indi-

10. Similar to *Socialist Labor* is Diffenderfer v. Central Baptist Church, 404 U. S. 412 (1972). In *Diffenderfer*, the tax-exemption accorded a church owned parking lot under a Florida statute was questioned. After the statute was amended, the appeal reached the Supreme Court, which held that it would not decide speculative questions about the new statute, and that the matter was now moot. Both these cases thus seem to indicate that the Court will not act when the main issue has been resolved and only an incidental issue remains to be decided.

cates that if the activity contraverted is imbedded in a statute, rendering high the probability of repetition, and the complainants will suffer with each repetition, then there is sufficient adversity. *See* Bullock v. Carter, 405 U. S. 134, 141 n. 17 (1972). *See generally* Note, 83 Harv. L. Rev. at 1684-5.[11]

A final series of cases introduces another element into the mootness doctrine. These cases are brought by parties who suffer injury from effects of a short-lived government order. The Supreme Court has stated that if the impact of such order will always pass before review is possible, then the case is not moot, for a finding of mootness would foreclose any possibility of review. The progenitor of this type of suit is Southern Pacific Terminal Co. v. ICC, 219 U. S. 498 (1911). ICC had ordered Southern Pacific to cease giving preferences to certain shippers, the order to continue for two years. Southern Pacific's appeal from the order was not heard by the Supreme Court until after the two-year provision of the order had ended. Holding the case not moot, the Court stated that a finding of mootness would create a class of situations in which, because of the short duration of the directive, the government could engage in actions "capable of repetition, yet evading review." 219 U. S. at 515.

11. The Court in three recent election situations has held not moot cases on appeal after the election has passed. In Fortson v. Toombs, 379 U. S. 621 (1965), another case arising from Georgia, the Court vacated and remanded the decree of a three-judge district court, but did not hold the case moot. The vacation and remand, however, may well have been motivated by concerns approaching the concreteness element of the mootness doctrine.

Whitcomb v. Chavis, 403 U. S. 124 (1971), and Roudebush v. Hartke, 405 U. S. 15 (1972), arose in Indiana. In *Whitcomb*, a multi-member legislative-district plan was in question. Although after the election, the Court proceeded to decide this case because a finding of mootness followed by vacation of the lower court's order might result in the return of the challenged procedure and reinstitution of the lawsuit, which would raise the same issues.

In *Roudebush*, a suit involving the propriety of a state court's ordering a recount in a contest for the office of U. S. Senator, the constitutional issue of who is ultimately to judge the result of the race, the U. S. Senate or the state, remained clearly in contention, barring a finding of mootness.

Recent cases have relied on this doctrine. In *Moore* v. *Ogilvey*, 394 U. S. 814 (1969), the petitioners had raised a challenge to an Illinois requirement that a potential nominee amass signatures in fifty counties. Citing *Southern Pacific*, the Court held this case was justiciable, though the election had passed, for if the 50-county requirement were not tested, there would be a high degree of certainty that it would continue to be controlling from election to election. The same considerations preserved the justiciability of an attack upon a Tennessee residency-for-voting requirement in Dunn v. Blumstein, 405 U. S. 330, 333-4 n. 2 (1972).

In Carroll v. President and Commissioners of Princess Anne County, 394 U. S. 175 (1968), the prevention of potentially inflammatory "white supremacist" rallies by a ten-day injunction was on appeal in the Supreme Court. The impossibility of review of a ten-day injunction before its expiration and the persistence of the petitioners, both by pursuing the legal questions and by agitating with "continuing activities and programs," foreclosed a holding of mootness.

Having discussed these various components of the mootness doctrine, it remains to relate them to the assault on the "interpretive regulations" of New Jersey's welfare program presently before this Court. In many respects, this is a close case, with the arguments seeming to be nicely balanced.

The employers urged that they are suffering continuing injury from the mere existence of the welfare programs. Unless this argument is accepted, it appears that this case is moot. The only relief sought by the employers that could now be of any use would be a declaratory judgment. Though such a declaration might not be impermissible, the considerations encompassed in the mootness doctrine need be addressed.

Adversity must be judged by an objective standard. Here, absent a continuing injury, the posture of the plaintiffs may not be sufficiently antagonistic. As in *Hall* v. *Beals*, *supra*, one who has been injured but will be impaired only in the future if certain

speculative contingencies come to pass can no longer pursue the litigation. Moreover, the willingness of the state officials adequately to defend policies now threatened, not with an injunction, but only by a declaratory judgment, may be substantially diminished.[12] Having stated this, it is important to note the intervention of the Teamsters Union and the participation, *amicus curiae*, of the Chamber of Commerce of the United States. The presence of these parties does suggest an on-going interest in the issue raised in this litigation.

The procedural posture of this case makes it the antithesis of a "concrete" dispute. No testimony has been taken, no evidence adduced, no findings made. Thus, we are not faced with the prospect of stating that a lengthy trial must go for nought. Rather, we are asked to decide "questions of law" in somewhat of an abstract setting. Moreover, the real possibility of change in the regulations renders this case conjectural.[13]

Finally, we must deal with the contention that this is a government program "capable of repetition, yet evading review." As will be developed, infra, that contention was raised but not met in ITT v. Minter, *supra*. The presence, in that case, of a still active labor dispute raises doubts about the argument that this is a situation capable of evading review. *See* Russo v. Kirby, 453 F. 2d 548 (2d Cir. 1971). Nevertheless, cognizant of the time required to perfect appeals both to this Court and to the Supreme Court, review may be unavailable in the majority of cases such as this.

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12. In W. T. Grant, *supra*, and Trans-Missouri, *supra*, defendants' willingness to defend can be assumed to have been motivated by a desire to avoid the type of relief sought by the government and a fear of subsequent private treble-damage actions, strong motivators indeed.

13. As plaintiff-appellants' complaint and memorandum in support of their motion for preliminary injunction make clear, their challenge is aimed at an interpretative regulation promulgated by defendant-Commissioner. Interpretative regulations are among the most rapidly changing of the oft-changed components of welfare programs.

Thus, to avoid holding that this case is moot, it must be found either that this appeal falls into the *Southern Pacific* category, or that the presence of the programs has an on-going direct effect on the appellants.

II.

The analysis of the mootness doctrine indicates that the continuing vitality of this case turns on two close issues: the "continuing effects" question and the *Southern Pacific* question. A resolution is, however, made simpler by a Supreme Court case, centrally important to determining the answers crucial to this appeal.

In Local No. 8-6, Oil, Chemical and Atomic Workers, Int'l. Union, AFL-CIO v. Missouri, 361 U. S. 363 (1960), the union, representing employees of a private company selling natural gas, chalienged the constitutionality of a Missouri statutory scheme, referred to as the King-Thompson Act. The Missouri legislation provided that, upon finding certain conditions present, the Governor could seize and operate a privately-owned public utility being struck, and that strikes against such facilities after the take-over would be unlawful. Having struck the gas company, that the Governor then seized, the employees were enjoined from further work stoppages, in accordance with the statutory program. The day after the injuction issued, the strike ended. One month later the underlying labor dispute was resolved and eleven weeks after that the seizure was terminated. The union continued to appeal the issuance of the injunction and sought a declaration that the Missouri statute was unconstitutional, interfering with the workings of the National Labor Relations Act—the basis of the Supremacy Clause claim both in *Oil Workers* and in the present appeal—and further alleging that there was a violation of the Due Process clause of the Fourteenth Amendment. Although the Missouri Supreme Court adjudicated the union's appeal on the merits, the United States Supreme Court held that the expiration of the injunction and settlement of the labor dispute rendered the case moot.

In Division 1287, Bus Employees v. Missouri, 374 U. S. 74 (1963), the same Missouri statute was challenged, there in the context of a labor dispute unsettled even when the case reached the Supreme Court. The Court, holding *Bus Employees* adjudicable, distinguished *Oil Workers* and Harris v. Battle, 348 U. S. 803 (1954), an earlier case relied on in *Oil Workers*, and stated that the resolution or continuation of the labor dispute was determinative of mootness.

> "Reliance for the claim of mootness is placed upon this Court's decisions in Harris v. Battle, 348 U. S. 803, and Oil Workers Unions v. Missouri, 361 U. S. 363. In the Oil Workers case the Court declined to consider constitutional challenges to the King-Thompson Act, and in the Harris case declined to rule on the constitutionality of a similar Virginia statute, on the ground that the controversies had become moot. *In both of those cases, however, the underlying labor dispute had been settled and new collective bargaining agreements concluded by the time the litigation reached this Court. Here, by contrast, the labor dispute remains unresolved.*" 374 U. S. at 77-8 (Emphasis added).

The employers here contend that, despite the settlement of the labor dispute, the present case is not moot. In support of their position they urge that the termination of the strike does not end the injury they suffer, but rather that their ability to bargain collectively with the union when the contract is terminated is hampered by the very existence of the welfare programs. They next claim that, since collective bargaining has been held to be an on-going process,[14] there is still an active dispute to be adjudicated, and that they continue to suffer injury.

14. Our attention has been called to the cases of Fishgold v. Sullivan Drydock & Repair Corp., 328 U. S. 275 (1946) and Aeronautical Industrial District Lodge 727 v. Campbell, 337 U. S. 521 (1949). Both cases dealt with the rights to reemployment of veterans returning from the Second World War. While it is clear that they can be said to stand for the proposition that collective bargaining is an on-going process, they do not address a problem similar to the one raised here and thus cannot be dispositive of the mootness problem.

The second argument crucial to avoiding dismissal for mootness maintains that this case should be considered in the limited, *Southern Pacific* class of cases "capable of repetition, yet evading review." In *ITT Lamp Division*[15] the Court of Appeals for the First Circuit was presented with a case quite similar to the present one.[16] Responding to the mootness issue, the First Circuit stated that the problem did indeed appear to be "close to the 'recurring question' category," citing *Southern Pacific*, 435 F. 2d at 991. The First Circuit, however, did not decide nor was it required to decide whether the issue was within the *Southern Pacific* ambit, for a second case, raising the same labor-welfare challenge, had already been joined on appeal, and in the latter case the strike had not yet been resolved.[17]

Oil Workers, however, responds to both questions essential to the employers' argument. In *Oil Workers*, just as in the present case, the threat to strike, labor's principal economic weapon, was affected by a state program. The employees in *Oil Workers* could have contended that their collective bargaining ability had been hindered by their employer's knowledge that a strike could

15. Appellants point out that the United States Supreme Court denied certiorari in *ITT*, and did not vacate as moot. No conclusions may be drawn from the denial of certiorari. *See* Maryland v. Baltimore Radio Show, Inc., 338 U. S. 912 (1950) (Frankfurter, *J.*); H. M. Hart & H. Wechsler, The Federal Courts and the Federal System 61 (1953).

16. The First Circuit, finding that there was not a federal preemption and that a balancing of the effects upon each other of the federal-labor and the joint federal-state welfare policies was required, held that this was a role more properly played by the Congress and affirmed the District Court's denial of relief. In view of our disposition of the case, we need not comment further on the First Circuit's action.

17. Indeed, Judge Coffin stated, after discussing the *Southern Pacific* doctrine, "In any event, however, the appeal of Maurice Concrete [the appeal joined with *ITT*, in which the dispute had continued] presents the identical question." 435 F. 2d at 991.

The fact that a strike was still in existence at the time the appeal was before the First Circuit indicates that evasion of review is not inevitable.

provoke an injunction terminating the work stoppage, without resolving the dispute.[18] The present case would appear to be the obverse of this. Here, the employers can arguably claim that their collective bargaining ability is hindered by the employees' knowledge that a strike might be made more endurable through receipt of welfare benefits.

The Supreme Court, in *Oil Workers*, citing its earlier dismissal of Harris v. Battle, *supra*, squarely rejected both portions of appellants' argument:

> "In Harris v. Battle, 348 U. S. 803, these principles were given concrete application in a context so parallel as explicitly to control disposition of the primary issue here. That case originated as an action to enjoin the enforcement of a Virginia statute, markedly similar to the King-Thompson Act, under which the Governor had ordered that 'possession' be taken of a transit company whose employees were on strike. Although the labor dispute was subsequently settled and the seizure terminated, the trial court nevertheless proceeded to decide the merits of the case, holding that the seizure was constitutional. Harris v. Battle, 32 L. R. R. M. 83. The Virginia Supreme Court refused an appeal. Harris v. Battle, 195 Va. lxxxviii. In this Court it was urged that the controversy was not moot because of the continuing threat of state seizure in future labor disputes. It was argued that the State's abandonment of alleged unconstitutional activity after its objective had been accomplished should not be permitted to forestall decision as to the validity of the statute under which the State had purported to act. It was contended that the situation was akin to cases like Southern Pac. Terminal Co. v. Interstate Commerce Comm'n, 219 U. S. 498, 514-516.

18. In *Bus Employees, supra*, the Court stated that the threat of reinvocation of the seizure act in *Oil Workers* was only speculative. This may well be read to indicate that the detrimental effect on collective bargaining because of the "background fears" argument, alone, is not weighty enough to keep alive a controversy.

> In finding that the controversy was moot, the Court necessarily rejected all these contentions. 348 U. S. 803. Upon the authority of that decision the same contentions must be rejected in the present case. See also Barker Co. v. Painters Union, 281 U. S. 462; Commercial Cable Co. v. Burleson, 250 U. S. 360. 361 U. S. at 368-9.[19]"

More recent Supreme Court pronouncements on mootness in labor cases have not significantly undercut the *Oil Workers* rule that settlement of the underlying labor dispute, absent special circumstances, requires a holding of mootness. *See* Sears, Roebuck & Co. v. Carpet Layers, 397 U. S. 655 (1970).

In Liner v. Jafco, Inc., 375 U. S. 301 (1964), a Tennessee state court enjoined picketing at a building site, and required the contractors who had sought the injunction to post a bond to indemnify petitioners if the injunction were "wrongfully" sued out. The Tennessee Court of Appeals, finding that the construction at the site had been completed, dismissed the enjoined picketers' challenge as moot. The U. S. Supreme Court, holding that mootness is a federal question, addressed the issues raised by the petitioners. The Court held that the petitioners, whose federally protected rights might have been abridged, and for whose benefit the bond had been posted, had a substantial continuing stake in the litigation both because their rights had already been abridged and because provision had been made to redress such deprivation if found unlawful. In the case now pending, such considerations are not present. Moreover, state court interference with labor problems arguably within the exclusive jurisdiction of the NLRB is a matter which the Supreme Court held particularly important previously, and therefore felt compelled to adjudicate the case.

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19. Three Justices dissented in *Oil Workers*. Their dissent, however, was bottomed on the possibility that striking union members might be liable for monetary damages or loss of seniority, a question the majority held not to be properly before the Court. No one expressed any doubts that the resolution of the labor dispute mooted the major issue in the case, the constitutionality of the injunction.

The cases discussed in Part I of this opinion, while perhaps indicating some lessening of the mootness stricture, do not appear to affect the vitality of *Oil Workers* in a labor context. If *Oil Workers* is to be found not harmonious with the current contours of the mootness doctrine, that decision should, and perhaps must, be made by the U. S. Supreme Court.

The *Oil Workers* case requires that we dismiss this appeal. The lack of immediacy and solidity of interest necessary to support jurisdiction is reflected here in the atmosphere of abstraction, ambiguity, and conjecture surrounding this matter. Accordingly, we now dismiss this appeal as moot with directions to the District Court, on remand, to vacate and dismiss for the same reason. See United States v. Munsingwear, 340 U. S. 36 (1950). *Cf.* Socialist Labor Party v. Gilligan, 406 U. S. at 592-3, n. 3 (Douglas, J. dissenting)

This disposition is consonant with a proper appreciation of the role of the federal judiciary when asked to decide the constitutionality of state statutes and programs. In such cases, our task does not involve conjuring up situations to preserve an otherwise quiescent issue, nor does our assignment include constitutional adjudication unless such is necessarily implicated in the decision of a case or controversy squarely before the Court. *See* Ashwander v. TVA, 297 U. S. 288, 346-8 (1936) (Brandeis, J. concurring). Because we act only when required, can we legitimately act at all. The issue presented to the Court is now moot, therefore, we must stay our hand.

An order will be prepared, remanding the case to the District Court for disposition consistent with this opinion.

GIBBONS, *C. J.*, dissenting.

This is an appeal from a dismissal by the district court pursuant to Rule 12(b)(6), Fed. R. Civ. P., for failure to state a claim upon which relief may be granted. The appellants are two New Jersey corporations engaged in the tire sales and service business. According to the complaint, all their production and

service employees are represented by the intervenor defendant, Teamsters Local Union No. 676. On May 14, 1971, upon the expiration of a collective bargaining agreement which had been in effect since May 15, 1968, the local struck as a result of the parties' failure to reach a new agreement. According to the complaint, that strike was still in progress when the complaint was filed on June 10, 1971. The only hearing was that held on June 24, 1971. That hearing was on the plaintiffs' motion for a preliminary injunction, in support of which the plaintiffs were prepared to offer testimony. At the hearing the intervening defendant, Local Union No. 676, was permitted to intervene; the Attorney General, representing the public official defendants, was permitted to make an oral motion to dismiss for lack of jurisdiction under 28 U. S. C. § 1337, upon which the court never ruled. The intervening defendant was permitted to make an oral motion to dismiss for failure to state a claim upon which relief may be granted. In advancing the Rule 12(b)(6) motion, counsel for the local relied upon the opinion of the First Circuit in *ITT Lamp Division* v. *Minter*, 435 F. 2d 989 (1st Cir. 1970), *cert. denied*, 402 U. S. 933 (1971); although, as that opinion makes clear, the district court decision reviewed was the denial of a preliminary injunction after an evidentiary hearing. The district court below declined to take testimony, and dismissed solely upon the basis of the allegations in the complaint. Thus, assuming that the case is still justiciable, our review would be confined to the legal sufficiency of the allegations of the complaint, in particular the allegations in paragraph 14:

> "Plaintiffs believe and therefore aver that the payment by the State of New Jersey through its instrumentalities and political subdivisions, pursuant to the aforesaid interpretative regulation, of public assistance and public welfare benefits to individuals and the families of individuals who voluntarily leave their employment to directly engage in and actively participate in an economic strike against their

employer, interferes with and infringes upon free collective bargaining as guaranteed to Plaintiffs by Congress under the Labor-Management Relations Act of 1947, as amended, 29 U. S. C. § 141 *et seq.*; constitutes an intrusion by the State of New Jersey into the field of labor-management relations which Congress has pre-empted and occupied to the full extent of its powers; and, accordingly, violates Article VI, Clause 2 of the Constitution of the United States."

At the hearing the plaintiffs were prepared to offer testimony in support of their claim that the availability of welfare benefits for strikers did in fact interfere with and infringe upon free collective bargaining. The absence of such proof at the hearing upon the preliminary injunction was relied upon by the *Minter* court as one reason, among others, for affirming the denial of a preliminary injunction in that case. Here, the plaintiffs were prepared to offer such evidence, but the court ruled that the complaint failed to state a cause of action. Reading the complaint as a whole, and particularly paragraph 14, it is perfectly clear that the gravamen of the charge is that the *availability* of strike benefits adds the economic power of the state to the union side, and thereby interferes with the *collective bargaining relationship.*

Thus, this controversy is moot only (1) if welfare benefits to strikers are no longer available, or (2) if there is no longer a collective bargaining relationship which can be affected by such availability. It is clear from the briefs filed on behalf of the public defendants that welfare benefits are still available to strikers in New Jersey, and that the state has no present intention of changing its policy with respect to such payments. Thus, the only basis upon which this controversy may be classified as moot is a finding that there is no longer a collective bargaining relationship which can be affected by the acknowledged continued availability of welfare benefits for strikers.

Since no testimony was taken in the district court, the record is almost totally devoid of any facts with respect to the actual status of the collective bargaining relationship. The judges in the majority act upon the conflicting representations of counsel as to the date of termination of the strike. The opinion states:

> "The union states that the strike 'ended immediately prior to the June 24, 1971 hearing.' The employers allege that the 'employees did not return to work until June 28, 1971.' Under either factual situation, a new contract having been accepted and ratified, it is clear that the labor dispute undergirding this challenge to the New Jersey programs had been concluded before the trial judge dismissed the action and long before appeals were filed or argued in this Court." (footnote omitted)

With deference, it is a long logical leap from the very little information furnished to us upon which counsel agree, and the conclusion drawn by the majority. Among the unanswered questions are these:

A. There is a contract, but is it of long or short duration?

B. If it is of short duration, will collective bargaining over terms of its renewal, extension or modification continue while it is in effect?

C. Whether it is of long or of short duration, does it have a binding grievance/arbitration and no-strike provision, or is the union free to strike over grievances?

D. Will the availability of welfare benefits to strikers have any effect upon the bargaining relationship in any of the above situations?

The plaintiffs vigorously assert that the bargaining relationship is still affected by the availability of strike benefits. If the record established that the parties were in year one of a three-year labor contract with a no-strike clause, I would agree that the controversy might be too speculative to warrant decision. Short

of that situation, the impact on the collective bargaining relationship of the availability of welfare benefits to strikers may be quite real and immediate. But we simply do not know what the situation is because the plaintiffs were deprived of the opportunity of making a record in the district court. The analytical unsoundness of the majority's position is reflected in its reliance, in support of its mootness conclusion, on that very deprivation. The opinion states:

> "The lack of immediacy and solidity of interest necessary to support jurisdiction here is reflected in the atmosphere of abstraction, ambiguity, and conjecture surrounding this matter."

If there is abstraction and ambiguity it arises from the absence of a record. If there is conjecture, the conjecture is by the majority of this panel. Their conclusion that there is no collective bargaining relationship which may be affected by the availability of welfare benefits to strikers is entirely conjectural. Appellate decision making cannot be reduced to scholastic disputation about rules to be drawn from previously decided cases. It must first of all be grounded in facts. There is no more justification for making a hypothetical or conjectural decision upon an issue of alleged mootness than upon an issue going to the merits.

This case can be regarded as having been made moot by the termination of the strike only if we construe the complaint as addressed to the protection of the integrity of the collective bargaining relationship only during the pendency of a strike. But it cannot fairly be so construed. Collective bargaining over contract terms more often than not goes on for months before a strike. Collective bargaining over grievances may go on continuously. The complaint seeks to unfetter the collective bargaining relationship from alleged interference by New Jersey. The relationship for which the protection of the court has been sought is a continuing one. *See NLRB* v. *Newark Morning Ledger*, 120 F. 2d 262, 267 (3d Cir.), *cert. denied*, 314 U. S. 693 (1941).

In the contect of the protection of a continuing relationship perhaps only two of the many decisions discussed in the majority opinion are relevant, *Fishgold* v. *Sullivan Drydock & Repair Corp.*, 328 U. S. 275 (1946); *Bus Employees* v. *Missouri*, 374 U. S. 74 (1963).

In *Fishgold* a veteran was laid off by his employer in compliance with the seniority provisions of a collective bargaining agreement. He sued the employer for damages and for a declaratory judgment that his layoff was in violation of Section 8(c) of the Selective Training and Service Act of 1940, 50 U. S. C. App. § 301. The labor union intervened, taking a position in defense of the validity of contract seniority provisions. The district court awarded money damages to the veteran, and only the union appealed. Meanwhile, the one-year statutory veteran's preference period for the original veteran plaintiff's employment had expired. The Supreme Court held that the union, because of the ongoing relationship between it and the employer by virtue of the labor contract, had standing to appeal. Since the contract was still in existence, the case was not moot. *Fishgold* is, of course, only authority for the instant case by way of analogy. But the analogy is closer than in any of the cases upon which the judges in the majority rely.

Bus Employees, as the majority opinion points out, dealt with the validity of a Missouri statute which gave the governor of that state the authority to seize the facilities of a public utility in the event of a strike, and to operate them in the public interest. The statute was challenged on the same basis as is the New Jersey regulation on welfare benefits to strikers challenged here, interference with a relationship regulation of which has been preempted by paramount federal law. While the case was on appeal the governor terminated the seizure. Missouri then urged mootness, relying on *Oil Workers Union* v. *Missouri*, 361 U. S. 363 (1960), a case involving the identical statute. The court declined to dismiss as moot, and held the Missouri statute unconstitutional. It distinguished *Oil Workers* because in that case

both the labor dispute and the seizure had ended, whereas in *Bus Employees* the strike had not ended and the availability of the seizure device as an available means of terminating it had an ongoing effect. *Bus Employees*, again, is only analogous authority since the plaintiffs sought the protection of the right to strike, a right lawful under the National Labor Relations Act which Missouri attempted to make unlawful. But on the mootness issue the case is quite closely in point, for it recognizes that the availability of state interference can have an ongoing effect upon the collective bargaining relationship, and that a controversy over such availability is not moot, as long as the affected relationship exists.

The issues in this case are of considerable public interest, and likely to recur. Overanxiety on the part of the federal courts to find such cases non-justiciable is not consistent with our judicial obligations. As Judge Coffin said in a similar context:

> "Although the strike against ITT was subsequently settled, the issue, we know from our own experience, has earlier vainly sought appellate review in this circuit, and is likely again to be raised, bringing it close to the 'recurring question' category, where significant public rights are involved and court review ought not, if possible, be avoided. *See* So. Pac. Terminal Co. v. I. C. C., 219 U. S. 498, 515-516, 31 S. Ct. 279, 55 L. Ed. 310 (1911) and Marchand v. Director, U. S. Probation Office, 421 F. 2d 331 (1st Cir. 1970)." *ITT Lamp Division* v. *Minter, supra*, at 991.

We cannot without a record properly hold that this case is moot. At the same time, since there is no record, we cannot rule out the possibility that the situation of the parties has so changed as to render the case moot. The issues involved are complex and their proper resolution far from clear. *Compare ITT Lamp Division* v. *Minter, supra, with John Hancock Mutual Life Insurance Co.* v. *Commissioner of Insurance*, 349 Mass. 390, 208 N. E. 2d 516 (1965). I would remand the case to the district

court for a hearing to determine first, the actual collective bargaining relationship between the parties, and next, in what way, factually, that actual relationship is affected, if at all, by the availability of welfare benefits to strikers. Only with such a record can we properly decide if there is still a genuine case or controversy, and, if so, how it should be resolved.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Super Tire Engineering Company; Supercap Corporation; and A. Robert Schaevitz

vs.

Lloyd W. McCorkle, Commissioner of the Department of Institutions and Agencies of the State of New Jersey; Irving J. Engelman, Director of the Division of Public Welfare of the Department of Institutions and Agencies of the State of New Jersey; Fred L. Streng, Director of the Camden County, New Jersey Welfare Board; and Juanita E. Dicks; Welfare Director of the Municipal Welfare Department of the City of Camden, New Jersey. Intervenor: Local 676, Teamster Union, etc.

Super Tire Engineering Company,
Appellant in No. 71-1773,

Supercap Corporation,
Appellant in No. 71-1774,

A. Robert Schaevitz,
Appellant in No. 71-1775.

(D. C. Civil Action No. 853-71)

On Appeals from the United States District Court for the District of New Jersey.

Nos. 7-1773/71-1775.

Present: MCLAUGHLIN, ADAMS and GIBBONS, *Circuit Judges.*

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the appeals in these cases be, and the same are hereby dismissed as moot, and the cause remanded to the said District Court with directions to vacate its judgment, filed July 13, 1971, and to dismiss for the same reason, all in accordance with the opinion of this Court. Costs taxed against appellants.

ATTEST:

THOMAS F. QUINN,

Clerk.

November 22, 1972.

United States Court of Appeals
For the Third Circuit.

Super Tire Engineering Company, et al.,
Appellants,
vs.
Lloyd W. McCorkle, et al.,
Appellees.

Nos. 71-1773, 774 and 775.

Present: McLAUGHLIN, ADAMS and GIBBONS, *Circuit Judges.*

ORDER.

Amicus status in this appeal is hereby granted to the United States Chamber of Commerce.

The affidavit of Professor Northrup will be received and filed with the record.

By THE COURT,

Arlin M. Adams,
Circuit Judge.

Dated: November 22, 1972.

State of Pennsylvania
County of Philadelphia } ss.

AFFIDAVIT

HERBERT R. NORTHRUP, being duly sworn, deposes and says:

1. I am the same Herbert R. Northrup whose affidavit was submitted by the Chamber of Commerce of the United States to the United States District Court, for the District of Maryland, in *Francis* v. *Davidson*, No. 71-753K.

2. The aforesaid affidavit was prepared on the basis, in part, of the testimony that I would have given if permitted to testify in the United States District Court, for the District of New Jersey, in *Super Tire Engineering Company* v. *McCorkle*, No. 853-71. I had been requested by Mr. Herbert Keene, counsel for plaintiff in that case, to testify at the hearing thereon on June 24, 1971. Such testimony was not, however, permitted by the Court.

3. If I had been permitted to testify by the Court in *Super Tire*, my testimony would have been substantially similar to that contained in my affidavit filed in *Francis* v. *Davidson*.

Further affiant saith not.

Herbert R. Northrup
Herbert R. Northrup

Subscribed and sworn to before me this 24 day of September, 1971.

Sidney L. Fisher
Notary Public

Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires July 5, 1973.

IN THE UNITED STATES DISTRICT COURT
For the District of Maryland

Civil Action No. 71-853k

FRANKLIN WILKINS, et al., and ROBERT FRANCIS, et al.,
Plaintiffs,

vs.

RITA C. DAVIDSON and RALEIGH C. HOBSON,
Defendants.

Affidavit of Doctor Herbert R. Northrup in support of Memorandum of the Chamber of Commerce of the United States as Amicus Curiae, in the State of Pennsylvania, City of Philadelphia, County of Philadelphia.

DR. HERBERT R. NORTHRUP, having been duly sworn, was examined and testified as follows:

2 Mr. Cohen: My name is Lawrence M. Cohen, C-o-h-e-n. I am one of the attorneys, along with Mr. Gerard C. Smetana who is also here today, for the Chamber of Commerce of the United States which is appearing as amicus curiae in this case. I have also present today with me Mr. Andrew M. Kramer, K-r-a-m-e-r, who is counsel to ITT in the case of ITT versus Minter which is currently pending in the United States Supreme Court as number 1467.

Doctor Northrup has handed me a resume which I would like to attach to this affidavit and have the reporter mark it as Exhibit A.

By Mr. Cohen:

Q. Dr. Northrup, apart from the general qualifications that are set forth in the resume which you have handed me, can you tell us what your background is in the area of labor relations, generally. How many years have you been engaged in this area?

A. I have been active as a teacher, researcher and practitioner in the field of labor relations and collective bargaining since about 1940. I've specialized in three particular areas within this field. Collective bargaining, compensation, and civil rights in industry or industrial race relations. I've both practiced and taught in all of these areas.

For example, my current research involves the study of Negro employment in some thirty industries under a grant provided by the Ford Foundation. In addition, we have published numerous studies of collective bargaining in industry. Under my direction, studies of coalition bargaining have been published, studies of bargaining in the supermarket industry, studies of bargaining in other industries.

I've personally written numerous articles and books in this area. Generally two or three major articles a year and one book, every year or so. In the overall area, I am the coauthor of the "Economics of Labor Relations" which is the most widely used textbook in the field, and we are currently beginning work on the seventh edition. The first edition was published in 1950. It has been adopted by over three hundred colleges and universities.

I'm also coauthor of "Government and Labor" which is a book in a more specialized field.

There are numerous studies of which I'm an author and coauthor, so that I have been following closely the development in the collective bargaining field for all of my adult life, and naturally interested in anything which impinges or which may affect collective bargaining such as the current wage-price freeze, or welfare payments to strikers, or anything of that nature.

Q. Doctor, you mentioned welfare payment to strikers. Have you engaged in any specific studies or paid any particular attention to that area? A. Under my direction, yes. We have been engaged in an intensive study of this area since the latter part of 1970 and developed interest in it with the idea of determining whether we should make this study at least six months before that date.

Q. Will you tell us what you have done, as far as the study and what methods you've used? A. Well, I'm generally familiar with the area of Social Security and welfare because we have three chapters on that subject in the textbook, but this is a somewhat specialized area, so we start off by bringing—I start off in fact by bringing myself up to date in the area. Reading, getting information on the currencies of the programs and then when it became apparent to me that this would be an area of growing significance, I put together a research team which has been making intensive field studies of this subject on the one hand, and has been also expanding our knowledge, background information, general character of the programs on the other.

Q. Have you had assistance personnelwise? A. Yes. I have three people working with me on this study. One is a former student of mine, now a member of the faculty of the University of Maryland, Professor Armand J. Thiebolt, Jr. A graduate assistant, Mr. Ronald Cowin who is a former student at the University of Oregon where he graduated and who returned to college at the Wharton School after serving in the United States Marine Corps, where he reached the rank of captain. A second graduate student, Mr. Michael Johns who is an expert in statistical methods and data processing and who serves us by handling the statistics for us.

Q. What has been the scope of your study thus far? A. Well, we have attempted to, first, study the overall situation, and then to study individual situations, where welfare has been thought to be a significant factor in strikes and where data are available pertaining to that.

Q. How many such strikes have you studied specifically? A. In the national area, we have looked at the nonferrous, or copper strike which occurred in 1967, '68. The General 6 Electric Strike which was also a nationwide strike, in the sense it involved about a hundred locations of the company, in 1969, I believe, and extended into 1970, and the 1970 strike of General Motors. And then a number of local strikes such as the long strike which occurred earlier this year and late last year at the Westinghouse Lester Plant, which is a suburb of Philadelphia, the 1970 strike of the Oknite Company in California, the strike at Kimberly-Clark which occurred at various locations in Michigan and Wisconsin, and in Niagara Falls, New York in 1970 and '71, a long strike in 1970, '71 at Johns Mansville in New Jersey, and the 1971 strikes at Strick Trailer and Leeds and Northrup, both in the suburbs of Philadelphia. In addition to this, Mr. Cowin is at the west coast examining information about strikes which have occurred in California, Washington and Oregon. He should have completed that shortly.

We also are planning, or have done field work in other strikes and determining whether data can be obtained which will allow us to make some determination about them.

Q. You said that in part of your studies, you engage in field work. Did you, or members of your study group visit states 7 other than Pennsylvania? A. Yes. Mr. Cowin is currently in the west coast. He has visited about ten states, I believe, in total, to determine, to look at information and determine whether we can obtain information about them.

Q. As part of the field efforts as well as your own efforts, have you had occasion to talk to union representatives or welfare department representatives? A. Oh, yes. We interview all parties to the dispute and seek information, and a point of view, where it may be found. Our purpose is to provide information. This is a university research unit and we attempt to get all the information and clearly separate the fact from opinion.

Q. Would that also include reading literature available in the field? A. Oh, yes. Dr. Thiebolt is developing and summarizing the available published information and handling that end of it right now.

Q. Is the study you are talking about conducted under your direction and supervision? A. It's all been conducted under my direction and supervision. I have the responsibility for the final product.

Q. When can you estimate that the final product will
8 be completed? A. We expect the study to be completed by November and to be published in January. This requires, of course, the cooperation of everyone.

Q. Dr. Northrup, based upon your preliminary findings, and as a result of the research you have conducted in your studies, does the study seem to point in one direction? A. Oh, yes. The information that we have now seems to point in a particular direction. There does not seem to be any discrepancies of results, and I would say that when Mr. Cowin returns from California, which is next week, we would feel, that unless he has discovered some new information, that further field work will probably not be necessary because the information all seems to point to the same direction.

Q. Based upon information that you have collected thus far, and as well as your own opinions in this area, do you feel that welfare payments to strikers are a significant cost item? A. I know they are a significant cost item, and I think that they will become an increasing one unless we become a strikless society, which I doubt very much.

Naturally, the amount of payment of welfare is re-
9 lated to the number of manhours lost by strikers. But, let me put it this way:

I feel that an increasing proportion of strikers will be receiving welfare payments in the future, so that even if the number of strikes go down, it's quite possible for welfare payments to strikers to go up.

Q. To what do you attribute this trend? A. I attribute it to two fundamental factors. Number one is an overall change in attitude that many observers, including myself, have discerned concerning receipt of welfare payment. There is a decreased inhibition of the part of people to receive welfare payments, a greater propensity to accept them as a right rather than to regard the acceptance as degrading. Now, this can be ascertained simply by examining the welfare data.

For example, I have here the book by Gilbert Y. Steiner entitled, "The State of Welfare," and published by Brooking Institute, which is a very prestigeous organization in Washington, in 1971. Dr. Steiner is considered an authority on welfare, having written in the field considerably. But the data are government data, which are found on page thirty-two, table one and they show that the average number of welfare recipients was 4.1 million in 1964 and by the middle of 1970, 7.9 million as to payments to welfare recipients, it was 1.5 million in 1964 and 1969—excuse me. That's 1.5 billion in 1964 and in 1969, the last time for which data are present in this case volume if reached 3.5 billion.

Now, this occurred at the time this country was going through its greatest prosperity in history and a prosperous period that lasted longer than any other previous—as we say in economics, any previous height of the business cycle. So, you have the general factor.

Let's say, now, the specific factor that is going to make welfare payments to strikers be received by a greater proportion of the strikers is the efforts of AFL-CIO Community Relation Department and similar departments which are found in other unions such as the Teamsters, or Auto Workers. This department was established right after World War Two by Leo Perlis, P-e-r-l-i-s, a very able and effective individual who established it in what was then the CIO. And it was carried over into the AFL-CIO when the federation merged. Perlis built up an organization to increase the relationship of organized labor and social

work and welfare, and he placed in all community funds, United Funds, community welfare organizations as labor representative to help contribute to these funds, and perform all sorts of available work for the community. At the same time, it was aimed to develop the ability of strikers to get welfare which was undoubtedly the prime consideration of this work.

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Perlis has been working at this for twenty-five years, and today there is a union representative on all these community boards. Gradually, the local unions and national unions have learned when a strike comes up, or is threatened and negotiations seem to be breaking down, this individual, this union community welfare representative is contacted and he acts as a go-between to arrange to have the welfare people get ready to provide benefits to the strikers. Thus, a sophisticated relationship develops, forms are printed out and handed to union representatives. Union representatives are sworn in as temporary members of the welfare department. Welfare offices are temporarily set up in union halls and the machinery becomes, as we say, well-oiled and better oiled all the time.

Now, another factor which is part of this is the Food Stamp Program. One of my students remarked that the food stamp is a marijuana to the welfare heroin. What happens is, food stamps are Federal programs and Congress has specifically declined to prevent strikers from receiving food stamps. I'm not a lawyer, but it would appear there is no legal restraint at all. As soon as the man goes on strike he is immediately eligible for food stamps. He gets those through the welfare department and the union helps him on. As he goes into the welfare department, the social worker is likely to say to him "Now, we have other things that might be helpful to you . . ." They act like a clerk in a supermarket . . . "and you are eligible for this program, that program and another program . . ."

12

Food stamps in effect, get him on welfare and break down his inhibition again from taking welfare and these other programs,

which involve greater cost to the taxpaying public, are introduced to him, and efforts are made obviously by the people through the union representatives or social workers to show him how he may be qualified to programs he never heard or wouldn't otherwise be involved in.

So, this is going more and more, becoming more and
13 more common. Specially resulting from the tremendous publicity it receives such as the big strikes, the General Electric one in '69, '70, the General Motors one in late '70, the Chicago Teamsters' strike. Things like that.

Q. Dr. Northrup, you have talked about the willingness or lack of willingness to receive welfare. What about the general strike trend in the United States; has that increased? A. The general strike trend has been up in the latter part of the '60s. The strike trends are frequently higher in inflationary periods. I don't think anyone is prepared to say, at this time, that this is a permanent factor. It may be a significant factor, of course, I don't know what the effect of the wage-price freeze will be on strikes. They will, for a while, inhibit strikes. If the freeze lasts longer, there may be an explosion. This occurred in European democratic countries, but I would say that the strike trends—

Q. You say explosion. What do you mean by that? A. I mean tremendous breaking out of strikes all over. This could occur as a result of the wage-price freeze. So, when one talks about a trend, one has to be careful, to think on longer terms than five or six years, and in the last five or six years, definitely been up.

14 Q. Dr. Northrup, in your earlier question, you were talking about the AFL-CIO campaign strikes to inform strikers about welfare; at what stage does that usually occur? A. Well, it usually occurs in the strike preparation stage. It becomes more sophisticated now. In some cases, the unions have, in the past, waited until they got into a strike. Now it's more likely to occur in the strike preparation stage. Let me give you an example of how this occurs:

I have, here, a clipping from the "Chicago Sun Times" of August first, 1971. Now, you will recall about that time there was a question of whether there would be a nation-wide steel strike and this article has a remarkable title of quote: "Little Impact Seen in Ninety-day Steel Strike" end quote. It deals with various trends, various situations and I think they are talking about local sixty-five, a very large United States Steel facility in south Chicago, which is Indiana—excuse me. It's Gary, Indiana. It's South Works in Gary, Indiana.

Well, now, it says that, ". . . The union had four hundred trained counsellors . . ." and its says, and I quote: "Indiana welfare staffers have been training steel workers as tem-
15 porary welfare clerks for months."

And it says, quote: "Steel workers contribute mightily to the United Fund . . ." This is a quotation from the union officials. "So in a strike situation we feel we can appeal to those agencies just as they appealed to us."

And then it says, "The committees would also try to enroll as many steel workers as could qualify on public assistance rolls . . ." It quotes—

Q. Dr. Northrup, may we introduce that as Exhibit B? If you will, Miss Reporter.

Let me just ask you this that whether in your opinion the experiences related in that article are typical or atypical of the average strike situation? A. Typical of the large union strike today. They are, I would say they are and it's becoming more and more common.

Q. To what extent do local welfare agencies investigate an applicant's need prior to giving him assistance? A. You mean strikers?

Q. Yes, strikers. A. Virtually not at all. There are several reasons for this. Number one, when a strike occurs,
16 you have a virtual mob scene. Now, at the welfare office and even though the welfare department has put on tre-

mendous numbers of new temporary staffers at a very large cost to the tax payer for administration, they have no time. They come in and all these people demand welfare and pay. At other times, such as was indicated by that article, they put union people on as temporary staffers and simply just processed them as a means of signing them up.

So, in answer to your question, I would say investigations are conspicuously absent.

Q. Are work requirements, work rule requirements any form of hindrance to the striker? A. None at all.

Q. Why is that, sir? A. In a most unusual way. They regard strikers as out of work and incapable of getting work. They take the position that most companies won't hire strikers which often is true. Therefore, strikers have a need and therefore, they could get welfare. It's a very simple logistical situation.

Q. Dr. Northrup, you talk about welfare generally. Could we cover what forms, what particular form welfare would take? A. Welfare can take many forms. This first, of course, I might say is the National Food Stamp Program which is, as I pointed out earlier, is completely available to strikers. All the costs are paid by the Federal government and it enables strikers to get, say in various areas, depending on various things, as an example, about $120 worth of food stamps for maybe $20, something like that.

It's a significant factor. Strikers can go into a supermarket, buy a $100 worth of food and pay less than one fifth of what it's worth. Then there is Aid to Dependent Children, the Unemployed Father Segment. These programs provide cash payment to cover such costs as food, clothing, personal and household incidentals, heating, light, refrigeration, even rents or mortgages.

For example, during the General Electric strike of 1969 and '70, in Onondaga County which is where Syracuse is, GE has a big facility there, the New York Welfare department paid

mortgage payments on at least twenty strikers' homes. In addition to other aids, they also gave allowances for medical and dental care.

Q. Is this the medicard programs, if you know? A. Yes. General assistance programs that states support are another factor. These are programs available to individuals and
18 married couples without children, or in some cases married couples for children who are not eligible for the ADC-U program.

Q. The Unemployed Father Segment— A. Yes. Mainly this program is a direct relief program. States like to get people out of the direct relief program onto some form of Aid to Dependent Children, because Aid to Dependent Children is picked up largely by the Federal government, and General Assistance comes out of the state's pocketbook. Strikers are often started on direct relief or that type of aid and then shunted off to the ADC program as soon as possible.

There is also emergency assistance which is designed to provide immediate aid, which comes from the state or county funds, sort of like a petty cash fund. It gives immediate cash assistance until they can get them on another program.

For example, in Delaware County, Pennsylvania, where the Westinghouse plant is located, the Delaware County Board of Assistance was forced to borrow against future funds because it budgets $150,000 per half year, and uses that up quickly in the strike.

Q. Dr. Northrup, would that program be available,
19 for example, before a waiting period? A. Oh, yes. No waiting period was required, although Westinghouse employees were well paid, up toward $4 per hour. They were paid some of these from the direct emergency relief.

Now, in addition you have monies to assist those veterans who are unemployed. For example, Michigan's veterans trust was used to help General Motors strikers. Lynn County, Massa-

chusetts, where again, General Electric has a major facility, between twelve and thirteen thousand dollars was paid to strikers who were veterans during General Electric's strike.

Then, you have the so-called WIN program, except this program is designed to get employables out of relief and give them training so that they will be able to take care of themselves.

On the face of it, see, a striker just doesn't belong. He's an employed person, he's not unemployable. He's trained or he wouldn't be working. But they go report for training and the Department of Labor takes care of them by paying them a stipend. Of course, the thing is, like money blowing away. As soon as the strike is over, they are likely to go back to their own jobs.

20 Then, there is the employment insurance benefits which provides benefits to strikers, after seven weeks in Rhode Island and New York, where they get half former pay up to about $75 a week in New York.

Surplus foods is another payment that isn't so common now. It's been largely replaced by the food stamp program.

Q. You mentioned the stipend that the people receive on the WIN program; is that actually training they are going through? A. They are supposed to take actual training at that time, and of course, they usually drop out immediately when the strike is over. But, there is very little potential to get training for the particular job which they have. So, the training is usually wasted or the striker uses it, maybe, in the pursuit of hobbies or something like that. You see, it's a clear perversion of a program purpose.

Let me add to it on the WIN program. In the General Motors strike, almost twenty thousand people applied for training. The Department of Labor had no facility or capacity to take care of them, and so it compromised largely by paying them
21 a stipend of about, I think, $30 a week and put them in a holding status. They would get training theoretically,

when training became available. But of course, they just went back to work.

Q. Dr. Northrup, you just explained the various types of welfare and assistance that strikers get. Does the availability of these programs vary from state to state? A. Yes, it does. I trust you mean the availability to strikers.

Q. Yes. A. The availability not only varies from state to state, but in some states from county to county. Some fifteen or more states do not pay welfare to strikers. That is, such welfare that is under their administrative control. They can be right next to a state that pays, and the same strike can thus result in this type of disparity.

For example, welfare is paid to strikers in Illinois. It is not in Iowa. You can have a strike at John Deere, or at International Harvester and the strikers in one of the states would get welfare and in the other they would not. In the county area, things like direct assistance, general welfare can depend a great deal upon the predilection of the administration. That is because some are lenient about giving to strikers and some are likely to be less inclined to spend their taxpayers funds in this manner.

Q. Can you give us same example, Dr. Northrup, of the amount that has been paid out to various strikers from welfare funds that you have studied? A. Well, in the 1969-70 General Electric strike, for example, there were somewhere in the neighborhood of one hundred twenty-five thousand to one hundred fifty thousand strikers. The principal union was the International Union of Electrical and Radio Machine Workers. It paid benefits $12 to $14 per week. The second largest union, the United Electrical Radio and Machine Workers paid no strike benefits.

During a December, 1969, labor news conference an AFL-CIO representative disclosed strikers were receiving about $50 per week in public aid. In January of 1970, it was estimated that about one fourth of the strikers were receiving food stamps or surplus foods. Food stamps were just getting underway. The

surplus food program was more significant at that time than it is now.

So, in New York, twenty-five thousand union strikers were receiving an average of $50 per week compared to the $12 or $14 provided by the union. And, when you add strike
23 benefits and unemployment compensation, you could go up to $333 per month in New York.

In Massachusetts, General Electric strikers received welfare payments of two million thirty-seven thousand eight hundred twenty-three dollars during the strike. About one thousand strikers, for example, in Pittsfield, Massachusetts, received about $40 a week in public assistance.

According to the Director of Massachusetts' Department of Welfare, in Lynn, one thousand seven hundred sixty-one strikers were receiving an average of $47.14 per week in welfare assistance, which is more than twice as much as they got in strike benefits.

In Danville, Illinois, they were averaging $247 a month. And Evendale, Ohio, which is outside of Cincinnati, $275 a month.

In Bridgeport, Connecticut, $33 a week.

So, in that particular strike, they not only received a vast amount of public funds, but they got more than twice as much from the public treasury than they did from the union treasury.

In the General Motors strike in 1970, eighty-three million in cash payments from welfare assistance was provided
24 in Michigan alone. Another fourteen million in food stamps. In addition, strikers got from the UAW, the union, $30 a week for a single person, $35 a week for a childless couple, $40 a week, for a family. From public assistance, they got an average of $100 a month. They got about $94 in food stamps a month.

So, we got about a total of $172 a month in strike benefits, and $188 in welfare benefits. $182 to $195 it varied from month to month.

In California, the welfare department determined that a family of four would require about $350 a month to meet its needs. After $172 strike benefits is deducted, the family would get $178 from ADC-U program and between $60 and $90 per month in food stamps.

Now, out there General Motors, where it has a number of plants, a good many strikers with four dependents received in excess of $238 per month if on welfare, plus strike benefits of $172 per month which would give him about $95 per week while he was on strike, a substantial amount of money.

In the Westinghouse strike, which lasted one hundred fifty days in 1970 to '71, in Lester, Delaware County, outside of Philadelphia, the union didn't pay any strike benefits
25 but a family of four on welfare got $300 a month public assistance, and $40 in bonus food stamps. Two thousand five hundred employees were receiving food stamps.

At Johns Mansville, in Mansville, New Jersey, central New Jersey, the strike lasted from 1970 to '71, five and a half months. The union, the United Papermakers and Paperworkers, paid about $40 a week in strike benefits. Employees got $300 a month in welfare, plus food stamps.

Q. What is the number of strikers, percentagewise, that generally receive welfare benefits? A. It varies according to the capacity of the union to generate the administrative and other factors which bring them into the welfare situation. But, it goes anywhere from ten to forty percent, and it's definitely tending, as strikes get well publicized and the machinery gets more efficient to increase the number, I would suspect that the way we are going, that in another two years, you'll find sixty to eighty percent of strikers will receive welfare.

Q. These examples that you have given, Dr. Northrup, is that a typical example, you would feel, or an atypical example? A. No. I feel it is typical and particularly
26 typical of the future. We have found, for example, that a great many building constructions and trucking em-

ployees have received welfare benefits within that period. The telephone employees in their recent strike received welfare benefits. It's much more difficult to study these because these are widely scattered and make up only a small part of one particular community. So, that our data, our research, concentrates on these situations where the employees make up a substantial part of a community, or an area or a state labor force or where it is a major enough strike so that the impact is easier to determine statistically because, as I say, I remarked before, the data provided by the welfare people are insufficient to provide answers without doing extensive field work.

Q. What has been the source of the figures that you have given us? A. The sources are, number one, the local statistics kept in the local welfare department, those kept in the State of Michigan, where the State of Michigan keeps much better data than other states. Also, in California, hearing on this issue generated data. In addition, we have interviewed unions, companies and welfare people. In all of the situations, where we have investigated the strikes and obtained as much information as possible from them. We also do various statistical analyses.

For example, I would like to show you, and you might be interested in a typical statistical run that we have done which examines the extent of welfare in two previous years in Delaware County, Pennsylvania. In one year, in which there was no strike, and the following year in which Westinghouse has a very major facility, was on strike.

Q. These documents, Dr. Northrup, I'm going to have the reporter mark them as exhibits. May we have these documents marked as exhibits? A. Yes.

Q. These two documents have been marked as Exhibits C and D. A. Right.

Now, you will note that the document marked as Exhibit C, shows the trend of welfare from July of '69, to March of '70. And then, July of 1970 to March of '71. Now, the

economic situation in Delaware County was somewhat depressed, particularly because a major company—Boeing—laid off a great number of workers. So, in one pattern, welfare seems to be somewhat higher than the second year.
28 But, you will note it rose dramatically in August and stayed up, reaching a peak in January and then subsided slightly in March. That was the period of the Westinghouse strike. Therefore, we would say that the bulk of that general assistance plan was suddenly going up so high was because of the Westinghouse strike.

Now, I also call your attention to the slight drop in January. There, you see? And, that's when the transfer of the general assistance people went to ADC until the strike ended.

Q. You are now looking at the document that has been identified as Exhibit C? A. That's right. You see, that's a very serious problem. You can take that a little far and explain it further, you will find that generally—

Q. You are now looking at Exhibit D? A. Yes. The trend is somewhat different between ADC Aid to Dependent Children, Unemployed Parent segment and the general assistance. The reason they don't follow together is that the state or county people tried to transfer people from one to the other. This tremendous increase represents, without any question of a doubt, the impact of Westinghouse strike on the com-
29 munity which pays welfare to strikers.

Q. This strike, as you have mentioned previously, Dr. Northrup, is a strike you have studied as part of your general study of the area? A. Oh, yes.

I also call your attention to a second chart.

MR. COHEN: Would you have that marked, Miss Reporter, as Exhibit E?

THE WITNESS: This chart based on the statistics from the Department of Social Services in Michigan shows that the number of people who were on food stamps during the General

Motors strike shows, and divides them into two groups of people. Persons in public assistance households and persons in nonpublic assistance households.

Note the tremendous increase in non-public assistance households' initial impact of paying food stamps to strikers, and this tremendous increase in food stamps is a direct result of the General Motors strike.

In addition, you will note that the persons on public assistance households increased substantially and did not decline
30 as fast when the strike ended. This is because some remained on assistance and also some of the impact of the strike in forcing people to go on assistance.

By MR. COHEN:

Q. Dr. Northrup, you mentioned some examples of how the amounts paid under public assistance, and what unions and private agencies provided to strikers, compared to the employees' net pay prior to a strike. Could you give us a general comparison in that area? A. I would say that the amount the union provides is usually in the range of a maximum of a half. Let me correct that. In the beginning, the union sometimes can pay almost as much as public assistance, but drops off more rapidly so the overall average, what the union pays if the strike lasts about a month, would be about one half at the most.

Now, the longer the strike lasts, the less able the union is to pay benefits.

Q. Why is that so? A. Well, the costs of, if you have a strike involving ten thousand employees, to pay them, let's say $30 a week, is a substantial amount. And, even organizations like the United Automobile Workers which had a net
31 worth of many millions of dollars, in fact, checking with my textbook, I think I have a figure of—if I might find it. Well, the automobile workers, for example, in 1967, took in almost fifty-eight million dollars in receipts from dues and the like. But, the net worth, I would say of well over two

hundred million easily was used up. That money was used in strike benefits and payment of medical costs which it had to during the strike. So the union came out of the strike with General Motors totally broke, having had to mortgage its buildings and borrow money and so forth.

What the unions are using are the welfare rolls. The welfare funds and other tax supported money are used to pay extended, indefinite strike benefits. To extend benefits indefinitely to a large number of people.

Q. Is there any evidence that you have seen, that the unions would prefer strikers to receive assistance because of the aid provided from public moneys? A. I don't know if I can answer the word in terms of desires, but the inflation of the last several years has hit the union operation rather hard. In many cases, it's combined with a drop-off in the number employed and therefore members. And, there is an increasing tendency, I would say, of union members to resist dues increases,
32 and under the Landrum-Griffin Act, such increases have to be approved by the membership. Let me make a final point. A union official doesn't make himself popular by asking for dues increases. That is a human characteristic. The membership wants to get as much as it can for its money so the public funds amount to a way out—they're very happy from the union's point of view, they don't have to ask for increase in dues. They don't have to alienate membership. They don't have to, maybe, cut their services in order to provide a larger strike fund.

They can just direct their members to the public treasury.

Q. Do you see any correlative benefits to management? A. I really can't see what it means to management. The union is in a position to encourage its members to hold out longer and demand more money, higher settlements. For management, it would be extremely difficult indeed to find any benefits to accrue from such an arrangement.

Q. Is there any similar fund available to employers that have to suffer hardships from strikes, that you know of? A. The only mitigating fact to an employer is, of course, he
33 makes less money. He pays less taxes. But, he ends up with a net loss. So, I fail to see that is an advantage.

Q. Now, does the amount of public—let's say assistance provided to strikers, how does it compare to their net pay prior to the strike? A. Again, the average here wouldn't mean much because of the various situations.

Q. Can you give us an example? A. In the DuPont strike, involving the DuPont Company and an independent union in Niagara Falls last year, we made some calculations and tried to figure the effect of the strike, including the income tax that the employees were paid, New York having a rather severe state income tax as well as Federal tax. The employees were making $185 a week on the average before the strike. During the strike they were getting food stamps and unemployment compensation. I figured that, for about $35 to $45 less per week, they could enjoy not working.

In other words, by not working and receiving these nontaxable benefits, including—excuse me. Not including that nontaxable benefits, they were suffering a net loss of only $35 to $40 a week.

Now, such—I told you about the case of that typo-
34 graphical union where they were breaking even in New York—

Q. I don't think you covered that. Would you please tell us? A. Well, you recall a number of very severe strikes against the newspapers in New York City in the last decade, and one involving the typographical union. It was paying strike benefits and employees were receiving unemployment compensation so that their net take-home was almost equal. Now, that is an unusual case. When it comes to welfare and food stamps, it can get the gross up to a point of more than half. Anywhere from thirty percent to seventy percent would be my guess.

Where the welfare is paid in one of the states like New York and California, which has quite a generous welfare payment, I think—

Q. Dr. Northrup, what is the effect that welfare payments to strikers have on the administration of state welfare programs? A. Well, welfare costs a lot to administer, rightly or wrongly. And, the administrative costs are really quite tremendous and when you have a surge of people going on welfare, even if they just process the thing without investigating it, the cost can mount very severely.

35 In any state like Michigan, that is affected by strike, like the one that occurred at General Motors, you have a sharp reduction in income for the state because a lot of people are out of work, and sharp increases in expenses result from the payment of welfare and the administrative cost involved therein; even in food stamps, the state has an administrative cost. You have a situation where the state has to take money from other services to provide that—for example, in Michigan, they reduced the funds to education in order to pay welfare to strikers. That is the net effect.

In economy we have a fundamental law called the doctrine of opportunity cost. It states that the real cost is something that you give up to get. No state has, nor is it true about the Federal government, that we have unlimited funds for everything. If we learned anything during the 1960's we should have learned that what we have here substantially is the fact that if we pay welfare to strikers, we have to decide what we are going to give up.

Q. Apart from the pressures that have been placed on the funds of the state, has the payment of welfare benefits to strikers caused any problems in administration? A. The

36 administrative machinery often comes close to breaking. Near riots have resumed as the Welfare Department found in Chester, when the Westinghouse strike started. What happens, you see, is that the strikers in effect take over the welfare office

by their numbers and regular welfare recipients, regular welfare recipients, their checks and problems are pushed aside. All sorts of problems can occur. So, you have a good deal of administrative problems. Problems of sheer numbers and the fact that the welfare office is not organized in order to handle that situation.

Q. Dr. Northrup, based upon your study and your opinion, is there any evidence the length of a strike or the amount which is involved in the settlement have increased as a result of welfare payments made to strikers? A. Let me first of all say the length of a strike and the amount of a settlement may be completely variable. Faced with an inflationary situation in which the workers on strike are being compensated and have therefore no urgent desires to return to work, the employer may, for example, decide that it's better to give in early and give a large settlement rather than take a long strike.

37 On the other hand, the employer may feel he is unable to meet these demands which he feels are exorbitant and hold out. But the strike lasts a lot longer because the workers are supported by the tax funds.

Let me put it this way: It is very difficult to prove that a strike lasts "X" length of time or "Y" length of time because of one variable which may be significant, but not the only variable. However, I have yet to meet a labor leader or a management representative who did not believe that the effect of welfare payments, to strikers is to make the strike longer and settlement higher. Both believe that.

In my thirty years experience, when I find labor and management are so unanimous, I'm very much inclined to believe then what they are talking about.

Q. Has there been any statements by union leaders, strikes votes or otherwise, that indicate that welfare benefits are playing a part in unions settling the strikes? A. Oh, yes. There have been dramatic ones.

For example, both management and union officials were quoted in the General Motors strike to the effect that there was no pressure from the rank and file to settle, and that the rank of file was not hurting. And welfare benefits were
38 a factor. At the end of the General Electric Strike, both big locals in New York, Schenectady and Syracuse, voted against the agreed contract. When the vote came up, in Cleveland, a union official was quoted over the radio as saying, "Don't pay any attention to those votes in Schenectady and Syracuse. They get unemployment compensation and you don't . . ." And now the same thing may be said about welfare. Union officials made it clear that this is a factor.

Q. This is not an atypical example? A. Oh, no.

Q. Again, based upon your experience and studies, has welfare assistance, where welfare is not involved, have you found any evidence of greater violence or a greater economic stagnation or hardship as compared with the states which grant such assistance? A. No. I don't think any case can be made one way or the other. Violence, in my experience, is largely a function of the extent of police protection and the extent of where the union is badly losing the strike, to the extent that workers are drifting in and strikers are appearing on the job. When the latter occurs, sometimes union seem to turn to violence as a means to
39 "persuade" the rank of file that they shouldn't return to work. But, there has been none of that in my experience recently. If violence occurred at a particular strike, I would have to investigate the total situation before I could be certain why the violence occurred. It does not seem likely to me, that assistance or non-assistance had anything to do with it in the past.

Q. Is there any correlation between the availability of welfare assistance to strikers and the economic stagnation that can result from a strike? A. I think to the extent that welfare payments to strikers induce a strike to last longer and employers to grant a larger, and therefore more inflationary and less competitive settlement, the result may force the company into a

position where it is no longer competitive, and if it can't sell its good, it can't employ people. So, I would say the extent to which welfare is paid would well render a plant or area noncompetitive in competition with other plants in other areas and therefore stagnation is likely to occur.

Q. Dr. Northrup, it has been said that the difference in purpose between unemployment compensation laws and the AFDC-E program justify any dissimilar treatment of
40 strikers. Do you agree with that argument? A. Well, the argument is classic nonsequitur. It is true that the purpose of unemployment compensation and welfare are quite different. Unemployment compensation is conceived as a right, a payment to workers to provide for a short term unemployment to tide them over between jobs. And the fact that it's a term thing, twenty-six weeks or sometimes longer is indicative of that fact.

Now, welfare is designed to take care of people who are suffering great disability, who are unable to care for themselves like dependent children, blind people, those who suffer some great misery and basically are considered unemployable or incapable of getting work. A clear definition of that shows that it wasn't conceived for strikers. As a matter of fact, welfare payments to strikers, pro or con, do not appear in the laws which go back to 1930 because it simply never was conceived. It was beyond anybody's imagination that it would be paid to strikers.

I would say, in answer to your question, neither unemployment compensation nor welfare should be paid to strikers because strikers are neither temporarily unemployed and seeking work, and therefore, eligible for unemployment compen-
41 sation; nor are they without jobs and unable to get jobs.

They are virtually refraining from work, which is their right, but they are not doing something which in my judgment should be supported by public funds.

Q. Based upon all the factors that you have mentioned today, Dr. Northrup, and the preliminary findings of your studies, what would you conclude is the impact that welfare to strikers

is having on the process of collective bargaining? A. It cannot help but have a pernicious effect on collective bargaining. Collective bargaining works, because the parties know that if they don't move towards an agreement they will get hurt. A strike, to be effective, must hurt both sides. It is the strike and fear of a strike that causes compromise and agreement and the proof of the pudding is that such a situation exists on the railroad, where the parties know they won't be allowed to strike or if they do strike, the strike will be very short. So, they don't attempt to reach an agreement except with the impact of a government decision in most cases.

Now, if one party is not going to be hurt by a strike,
42 obviously collective bargaining really can't work. This is the situation that we have when one party is compensated by public funds. For that reason, I do not think that collective bargaining can in fact exist if we continue to support strikes by paying public benefits to private strikers. It seems to me, that if this is going to be done, why then the institution of collective bargaining should be regarded as outmoded and we should turn to some form of compulsory arbitration with strikes outlawed. I would regret this very much because I feel that this would have inhibiting effects on enterprise and innovation, and might mark the beginning of the United States as a second class industrial power. But, I cannot see how collective bargaining can function effectively if the trend towards welfare benefits for strikers continue at the present pace.

Mr. Cohen: Thank you, I have no further questions. But, I understand Mr. Kramer who, as I said previously, is the attorney for ITT in that case which is pending in the Supreme Court has a few questions.

By Mr. Kramer:

Q. Dr. Northrup, are you familiar with the case of
43 ITT Lamp Division, International Telephone and Tele-

graph Corporation versus Steven Minter of the Massachusetts Department of Welfare? A. I am.

Q. Dr. Northrup, have you had a previous conversation with myself relating to the case of ITT v. Minter? A. Yes, I have.

Q. Dr. Northrup, did you have Mr. Cowin prepare certain statistics under your direction for use in the ITT case? A. Yes, I did.

Q. I hand you what has been marked as Exhibit F with pages F-1 through F-14 and ask you to identify whether these documents contains these statistics prepared by Mr. Cowin pursuant to your direction for use in the ITT case? A. It does.

Q. And that document was intended to be used for the petition for rehearing in the ITT case currently in the Supreme Court? A. Yes, it was.

Q. Is the information contained on pages F-3 to F-14 typical or atypical of the material you have gathered in your study of this area? A. Oh, it's typical all right.

44 Q. Does the information contained on F-3 to F-14, in your opinion as an expert in this area, provide evidence of the fact that welfare assistance to strikers has had a substantial impact or has a substantial impact on the collective bargaining process? A. I'm sure it does.

Q. Would you explain why it does? A. Well, as I explained in answers to a question by Mr. Cohen earlier, the collective bargaining process depends on the final analysis for its effectiveness on the right to strike, and the strike hurting both parties.

It's obviously very difficult for the public to understand, but it's a fact that a strike, although the opposite of a peaceful collective bargaining, in a sense, tends to maintain peaceful collective bargaining. It's as I said before, the knowledge that a strike hurts both parties, and the fact that the outcome

of a strike is indeterminable and the experience that one has had with a strike which induces one to temper his wishes and to look for means of settlement by working things out by compromise and other methods. Now, if instead of a strike, one is faced with government board—like the Railway
45 Labor Act, or if instead of a strike being costly, one is compensated if on strike, or one party is compensated, then the strike doesn't hurt the other party and the strike is not feared, because the only way to settle a contract is to get somebody else to decide the case or, in the case of welfare, to accede to the demands of one side because one side is being hurt while the other isn't.

Q. Dr. Northrup, from what you answered, I take it that you would agree with the various opinions of the United States Supreme Court holding that the right to strike is really at the core of the collective bargaining process and that the exercise of economic weapons is inherent in the collective bargaining process? A. I certainly agree with it. It's not only inherent, it's an indispensable factor. As a matter of fact, I'm the author of several works which make that point very forcefully. I mentioned, "Government and Labor", published in 1963, which I'm a coauthor. I might also mention a 1966 book called, "Compulsory Arbitration and Government Intervention in Labor Disputes", of which I'm the author, which attempts to assess this situation, not only in the United States, but throughout the free world. I was the earliest one to point out the defects of the Railway Labor Act and its impact on
46 collective bargaining in an article in 1946. And the last of a long series of works on that subject is appearing in the Industrial and Labor Relations Review for October, 1971.

So, I've been very concerned all of my life with the need to preserve the right to strike in order to make the collective bargaining system work. Not because I think striking is fine, but because the threat of something worse makes you come to an agreement. If something worse doesn't exist, if you are going to

be paid for striking, then the collective bargaining system cannot work.

Mr. Kramer: I have no further questions.

CERTIFICATE

I hereby certify that I have read the preceding questions and answers, and the information contained therein is true and correct.

/s/ Herbert R. Northrup
Dr. Herbert R. Northrup

Sworn and subscribed before me this 10th day of September, 1971.

Sig and Notary Stamp Illegible

January 1971

Herbert R. Northrup

1961-

Professor of Industry
Wharton School of Finance & Commerce
University of Pennsylvania

1964-1969

Chairman, Department of Industry

1964-

Director, Industrial Research Unit

1968-

Chairman, Labor Relations Council

Personal: Born—New Jersey, March 6, 1918 Married, five children

Education:

A. B. Duke University, 1939
A. M., Harvard University, 1941
Ph.D., Harvard University, 1942 (Economics)

Previous Employment:

1958-1961

Employee Relations Consultant
General Electric Company
Full staff responsibility for all aspects of employee relations covering seventy-one General plants employing 100,000 employes. Member national negotiating committee and handled third-stage grievances under national contracts.

1955-1958

Vice President, Industrial Relations
Penn Texas Corporation
Full staff responsibility for all phases of personnel and

union relations in multiplant diversified company of 15,000 employees, including management organization of subsidiaries, executive recruitment, relations with ten unions, pensions, insurance, and plant security. Left when company was forced to sell many subsidiaries to meet over-commitments from unsuccessful proxy fights.

1952-1955

Industrial Relations Consultant
Ebasco Services Incorporated
Consultation with industrial clients on a variety of management and personnel problems including organization and controls, union relations, communications, and executive recruitment. Developed more consulting and business than anyone in history of department. Left to go with Penn-Texas which had been a client.
(Also served as Consultant, U. S. Salary Stabilization Board during 1952.)

1949-1952

Labor Economist
National Industrial Conference Board
Research and consultation on various economic and personnel problems.

1945-1949

Assistant Professor, Industrial Relations, Columbia University
Visiting Professor, Summer Sessions, New York University, University of California (Berkeley), and Columbia Business School
In addition to teaching, considerable time spent in research and management consultation.

1943-1945

Economist and Senior Hearing Officer, National War Labor Board, Detroit and New York Regions.

1942-1943

Instructor in Economics, Cornell University

Bibliography:

Author of over 150 articles in various professional, business, and popular journals and of ten books, including co-author of *The Economics of Labor Relations,* 6th Edition, 1969, the most widely used college text in the field, and *Government and Labor,* 1963; author *Organized Labor and the Negro* 1944; *Boulwarism,* 1964; *Compulsory Arbitration and Government Intervention in Labor Disputes,* 1966; *Negro Employment in Basic Industry,* 1970; *Negro Employment in Southern Industry,* 1971; and co-editor of *Readings in Labor Economics,* 1965; *Negro and Employment Opportunity,* 1965; and *Hours of Work,* 1965.

UNITED STATES COURT OF APPEALS
For the Third Circuit

Super Tire Engineering Company, Supercap Corporation and A. Robert Schaevitz, *Appellants,* *vs.* Lloyd W. McCorkle, et al.	Nos. 71-1773, 71-774, 71-1775.

SUR PETITION FOR REHEARING

Present:

Seitz, *Chief Judge,* McLaughlin, Van Dusen, Aldisert, Adams, Gibbons and Rosenn, *Circuit Judges.*

The petition for rehearing en banc of this Court's panel order of November 22, 1972, filed by Chamber of Commerce of the United States of America in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available cricuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By The Court,
Arlin M. Adams,
Judge.

Dated: December 20, 1972

UNITED STATES CONSTITUTION
ARTICLE III

Section 2, Clause 1.—The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between citizens of different States,—between citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

UNITED STATES CONSTITUTION
ARTICLE VI

Clause 2.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

National Labor Relations Act, as Amended, 29 U. S. C. § 151

§ 151. Findings and declaration of policy

* * * * *

It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the

purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. July 5, 1935, c. 372, § 1, 49 Stat. 449; June 23, 1947, c. 120, Title I, § 101, 61 Stat. 136.

NATIONAL LABOR RELATIONS ACT, 29 U. S. C. § 158

Sec. 8. (a) It shall be an unfair labor practice for an employer—

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

* * * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 159(a) of this title;

* * * *

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided,* That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existance of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days and after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2)-(4) of this subsection shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 159(a) of this title, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer

engaged in the particular labor dispute, for the purposes of sections 158-160 of this title, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

SOCIAL SECURITY ACT OF 1935, AS AMENDED, 42 U. S. C. § 602 ET SEQ.

§ 602. State Plans for Aid and Services to Needy Families With Children; Contents; Approval by Secretary

(a) A State plan for aid and services to needy families with children must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to families with dependent children is denied or is not acted upon with reasonable promptness; (5) provide (A) such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community services aides, in the administration of the plan and for the use of non-paid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency;

and (6) provide that the State agency will make such reports, in such forms and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; (7) except as may be otherwise provided in clause (8), provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income; (8) provide that, in making the determination under clause (7), the State agency—

(A) shall with respect to any month disregard—

(i) all of the earned income of each dependent child receiving aid to families with dependent children who is (as determined by the State in accordance with standards prescribed by the Secretary) a full-time student or part-time student who is not a full-time employee attending a school, college, or university, or a course of vocational or technical training designed to fit him for gainful employment, and

(ii) in the case of earned income of a dependent child not included under clause (i), a relative receiving such aid, and any other individual (living in the same home as such relative and child) whose needs are taken into account in making such determination, the first $30 of the total of such earned income for such month plus one-third of the remainder of such income for such month (except that the provisions of this clause (ii) shall not apply to earned income derived from participation on a project maintained under the programs established by section 632(b)(2) and (3) of this title); and

(B) (i) may, subject to the limitations prescribed by the Secretary, permit all or any portion of the earned or other income to be set aside for future identifiable needs of a dependent child, and (ii) may, before disregarding the amounts referred to in subparagraph (A) and clause (i) of this subparagraph, disregard not more than $5 per month of any income;

except that, with respect to any month, the State agency shall not disregard any earned income (other than income referred to in subparagraph (B)) of—

(C) any one of the persons specified in clause (ii) of subparagraph (A) if such person—

(i) terminated his employment or reduced his earned income without good cause within such period (of not less than 30 days) preceding such month as may be prescribed by the Secretary; or

(ii) refused without good cause, within such month as may be prescribed by the Secretary, to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined by the State or local agency administering the State plan, after notification by him, to be a bona fide offer of employment; or

(D) any of such persons specified in clause (ii) of subparagraph (A) if with respect to such month the income of the persons so specified (within the meaning of clause (7)) was in excess of their need as determined by the State agency pursuant to clause (7) (without regard to clause (8)), unless, for any one of the four months preceding such months, the needs of such persons were met by the furnishing of aid under the plan;

* * * * *

§ 606. Definitions.

When used in this part—

(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment;

(b) The term "aid to families with dependent children" means money payments with respect to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of any type of remedial care recognized under State law in behalf of, a dependent child or dependent children, and includes (1) money payments or medical care or any type of remedial care recognized under State law to meet the needs of the relative with whom any dependent child is living (and the spouse of such relative if living with him and if such relative is the child's parent and the child is a dependent child by reason of the physical or mental incapacity of a parent or is a dependent child under section 607 of this title), and (2) payments with respect to any dependent child (including payments to meet the needs of the relative, and the relative's spouse, with whom such child is living, and the needs of any other individual living in the same home if such needs are taken into account in making the determination under section 602(a)(7) of this title) which

do not meet the preceding requirements of this subsection, but which would meet such requirements except that such payments are made to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such child or relative, or are made on behalf of such child or relative directly to a person furnishing food, living accommodations, or other goods, services, or items to or for such child, relative, or other individual, but only with respect to a State whose State plan approved under section 602 of this title includes provision for—

(A) determination by the State agency that the relative of the child with respect to whom such payments are made has such inability to manage funds that making payments to him would be contrary to the welfare of the child and, therefore, it is necessary to provide such aid with respect to such child and relative through payments described in this clause (2);

(B) undertaking and continuing special efforts to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family;

(C) periodic review by such State agency of the determination under clause (A) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that the need for such payments is continuing, or is likely to continue, beyond a period specified by the Secretary;

(D) aid in the form of foster home care in behalf of children described in section 608(a) of this title; and

(E) opportunity for a fair hearing before the State agency on the determination referred to in clause (A) for any individual with respect to whom it is made;

(c) The term "relative with whom any dependent child is living" means the individual who is one of the relatives specified in subsection (a) of this section and with whom such child is living (within the meaning of such subsection) in a place of residence maintained by such individual (himself or together with any one or more of the other relatives so specified) as his (or their) own home.

(d) The term "family services" means services to a family or any member thereof for the purpose of preserving, rehabilitating, reuniting, or strengthening the family, and such other services as will assist members of a family to attain or retain capability for the maximum self-support and personal independence.

(e)(1) The term "emergency assistance to needy families with children" means any of the following, furnished for a period not in excess of 30 days in any 12-month period, in the case of a needy child under the age 21 who is (or, within such period as may be specified by the Secretary, has been) living with any of the relatives specified in subsection (a)(1) of this section in a place of residence maintained by one or more of such relatives as his or their own home, but only where such child is without available resources, the payments, care, or services involved are necessary to avoid destitution of such child or to provide living arrangements in a home for such child, and such destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment—

(A) money payments, payments in kind, or such other payments as the State agency may specify with respect to, or medical care or any other type of remedial care recognized under State law on behalf of, such child or any other member of the household in which he is living, and

(B) such services as may be specified by the Secretary; but only with respect to a State whose State plan approved

under section 602 of this title includes provision for such assistance.

(2) Emergency assistance as authorized under paragraph (1) may be provided under the conditions specified in such paragraph to migrant workers with families in the State or in such part or parts thereof as the State shall designate.

§ 607. Dependent Children of Unemployed Fathers; Definition.

(a) The term "dependent child" shall, notwithstanding section 606(a) of this title, include a needy child who meets the requirements of section 606(a) (2) of this title, who has been deprived of parental support or care by reason of the unemployment (as determined in accordance with standards prescribed by the Secretary) of his father, and who is living with any of the relatives specified in section 606(a) (1) of this title in a place of residence maintained by one or more of such relatives as his (or their) own home.

(b) The provisions of subsection (a) of this section shall be applicable to a State if the State's plan approved under section 602 of this title—

(1) requires the payment of aid to families with dependent children with respect to a dependent child as defined in subsection (a) of this section when—

(A) such child's father has not been employed (as determined in accordance with standards prescribed by the Secretary) for at least 30 days prior to the receipt of such aid,

(B) such father has not without good cause, within such period (of not less than 30 days) as may be prescribed by the Secretary, refused a bona fide offer of employment or training for employment, and

(C) (i) such father has 6 or more quarters of work (as defined in subsection (d) (1) of this sec-

tion) in any 13-calendar-quarter period ending within one year prior to the application for such aid or (ii) he received unemployment compensation under an unemployment compensation law of a State or of the United States, or he was qualified (within the meaning of subsection (d) (3) of this section) for unemployment compensation under the unemployment compensation law of the State, within one year prior to the application for such aid; and

(2) provides—

(A) for such assurances as will satisfy the Secretary that fathers of dependent children as defined in subsection (a) of this section will be referred to the Secretary of Labor as provided in section 602(a)(19) of this title within thirty days after receipt of aid with respect to such children;

(B) for entering into cooperative arrangements with the State agency responsible for administering or supervising the administration of vocational education in the State, designed to assure maximum utilization of available public vocational education services and facilities in the State in order to encourage the retraining of individuals capable of being retrained; and

(C) for the denial of aid to families with dependent children to any child or relative specified in subsection (a) of this section—

(i) if, and for so long as, such child's father is not currently registered with the public employment offices in the State, and

(ii) with respect to any week for which such child's father receives unemployment compensation under an unemployment compensation law of a State or of the United States.

(c) Notwithstanding any other provisions of this section, expenditures pursuant to this section shall be excluded from aid to families with dependent children (A) where such expenditures are made under the plan with respect to any dependent child as defined in subsection (a) of this section, (i) for any part of the 30-day period referred to in subparagraph (A) of subsection (b)(1) of this section, or (ii) for any period prior to the time when the father satisfies subparagraph (B) of such subsection, and (B) if, and for as long as, no action is taken (after the 30-day period referred to in subparagraph (A) of subsection (b)(2) of this section), under the program therein specified to refer such father to the Secretary of Labor pursuant to section 602(a)(19) of this title.

(d) For purposes of this section—

(1) the term "quarter of work" with respect to any individual means a calendar quarter in which such individual received earned income of not less than $50 (or which is a "quarter of coverage" as defined in section 413(a)(2) of this title), or in which such individual participated in a community work and training program under section 609 of this title or any other work and training program subject to the limitations in section 609 of this title, or the work incentive program established under part C;

(2) the term "calendar quarter" means a period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31; and

(3) an individual shall be deemed qualified for unemployment compensation under the State's unemployment compensation law if—

(A) he would have been eligible to receive such unemployment compensation upon filing application, or

(B) he performed work not covered under such law and such work, if it had been covered, would

(together with any covered work he performed) have made him eligible to receive such unemployment compensation upon filing application.

REGULATION OF THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE PRIOR TO JULY 12, 1973

Chapter II, Title 45, C. F. R.

§ 233.100 Dependent children of unemployed fathers.

(a) *Requirements for State Plans.* If a State wishes to provide AFDC for children of unemployed fathers, the State plan under Title IV—Part A of the Social Security Act must, except as specified in paragraph (b) of this section:

(1) Include a definition of an unemployed father which shall apply only to families determined to be needy in accordance with the provisions in § 233.20 and shall include any father who:

(i) Is employed less than 100 hours a month; or

(ii) Exceeds that standard for a particular month, if his work is intermittent and the excess is of a temporary nature as evidenced by the fact that he was under the 100-hour standard for the 2 prior months and is expected to be under the standard during the next month.

(2) Include a definition of a dependent child which shall include any child of an unemployed father (as defined by the State pursuant to subparagraph (1) of this paragraph) who would be, except for the fact that his parent is not dead, absent from the home, or incapacitated, a dependent child under the State's plan approved under section 402 of the Act.

(3) Provide for payment of aid with respect to any dependent child (as defined by the State pursuant to subparagraph (2) of this paragraph) when the conditions set forth in subdivisions (i), (ii), and (iii) of this subparagraph are met:

(i) His father has been unemployed for at least 30 days prior to the receipt of such aid.

(ii) Such father has not without good cause, within such 30-day period prior to the receipt of such aid, refused a bona fide offer of employment or training for employment. Before it is determined that a father has refused a bona fide offer of employment or training for employment without good cause, the agency must make a determination that such an offer was actually made. (In the case of offers of employment made through the public employment or manpower agencies, the determination as to whether the offer was bona fide, or whether there was good cause to refuse it, will be made by that office or agency.) The father must be given an opportunity to explain why such offer was not accepted. Questions with respect to the following factors must be resolved:

(*a*) That there was a definite offer of employment at wages meeting any applicable minimum wage requirements and which are customary for such work in the community;

(*b*) Any questions as to the father's inability to engage in such employment for physical reasons or because he has no way to get to or from the particular job; and

(*c*) Any questions of working conditions, such as risks to health, safety, or lack of workmen's compensation protection.

(iii) Such father (*a*) has six or more quarters of work (as defined in subdivision (iv) of this subparagraph), within any 13-calendar-quarter period ending within 1 year prior to the application for such aid, or (*b*) within such 1-year period, received unemployment compensation under an unemployment compensation law of a State or of the United States, or was qualified under the terms of subdivision (v) of this subparagraph) for such compensation under the State's unemployment compensation law.

(iv) A "quarter of work" with respect to any individual means a period (of 3 consecutive calendar months ending on

March 31, June 30, September 30, or December 31) in which he received earned income of not less than $50 (or which is a "quarter of coverage" as defined in section 213(a)(2) of the Act), or in which he participated in a community work and training program under section 409 of the Act or any other work and training program subject to the limitations in such section 409, or the work incentive program established under part C of title IV of the Act.

(v) An individual shall be deemed "qualified" for unemployment compensation under the State's unemployment compensation law if he would have been eligible to receive such benefits upon filing application, or he performed work not covered by such law which, if it had been covered, would (together with any covered work he performed) have made him eligible to receive such benefits upon filing application.

(4) Provide for entering into cooperative arrangements with the State agency responsible for administering or supervising the administration of vocational education to assure maximum utilization of available public vocational education services and facilities in the State to encourage the retraining of individuals capable of being retrained.

REGULATION OF THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, ISSUED JULY 12, 1973

Chapter II, Title 45, C. F. R.

Chapter II—Social and Rehabilitation Service (Assistance Programs), Department of Health, Education, and Welfare

Part 233—Coverage and Conditions of Eligibility in Financial Assistance Programs

Dependent Children of Unemployed Fathers

Notice of proposed regulations regarding the definition of unemployed father in the program of Aid to Families with De-

pendent Children was published in the FEDERAL REGISTER of January 3, 1973 (38 FR 49). The notice presented two alternatives relating to the inclusion of fathers who are on strike or otherwise disqualified for unemployment compensation:

A: Give States option as to including or excluding;

B: Establish hours of work as the sole criterion, thus precluding exclusion of strikers otherwise eligible.

Thousands of comments were received, coming from all States. As could be expected, most of the responses were from management and labor; there were also many from private citizens and a number from Congressmen.

It is apparent from these comments that no one solution is going to satisfy all those who wrote. There was a fully predictable, although relatively close, division.

After consideration of the conflicting views presented, the Department has adopted alternative "A", leaving the States free to determine whether or not those on strike qualify for AFDC-UF. This is the only course fully consistent with the "New Federalism" policies of this Administration. This permits States wide flexibility in the administration of Federal/State programs, so that they may determine the best course of action in the light of their individual situations and varying circumstances. A Federal mandate either to include or exclude strikers would be undue interference with States' decisions on the extent of the program. If such a mandate is desired it should be set by Congress through the customary legislative process. Accordingly, alternative "A" is considered the acceptable alternative and is reflected in the amended regulation.

Section 233.100(a)(1), Chapter II, Title 45 of the Code of Federal Regulations is revised to read as follows:

§ 233.100 Dependent children of unemployed fathers.

(a) *Requirements for State plans.* * * *

(1) Include a definition of an employed father which shall apply only to families determined to be needy in accordance with

the provisions in § 233.20 of this chapter. Such definition must include any father who:

(i) Is employed less than 100 hours a month; or

(ii) Exceeds that standard for a particular month, if his work is intermittent and the excess is of a temporary nature as evidenced by the fact that he was under the 100-hour standard for the prior 2 months and is expected to be under the standard during the next month;

except that, at the option of the State, such definition need not include a father whose unemployment results from participation in a labor dispute or who is unemployed by reason of conduct or circumstances which result or would result in disqualification for unemployment compensation under the State's unemployment compensation law.

* * * * *

(Sec. 1102, 49 Stat. 647 (42 U. S. C. 1302))

Effective date. The regulations in this section shall be effective on July 12, 1973.

Dated: July 6, 1973.

James S. Dwight, Jr.,
Administrator, Social and Rehabilitation Service.

Approved: July 9, 1973.
Caspar W. Weinberger,
Secretary.

[FR Doc. 73-14304 Filed 7-11-73; 8:45 a.m.]

NEW JERSEY ASSISTANCE FOR DEPENDENT CHILDREN LAW, NJSA 44:10-1 ET SEQ.

44:10-1. Definitions.

As used in this act and for the purpose of the determination of eligibility to receive financial assistance under the provisions of this act, the following words shall have the following meaning, unless the context indicates another meaning:

(a) "Assistance for dependent children" means the assistance and other services to be extended under this act to or for needy dependent children and the parents and relatives with whom they are living for the following purposes:

(1) To provide for the care of needy dependent children in their own homes or in the homes of relatives, under standards and conditions compatible with decency and health.

(2) To help maintain and strengthen family life, and

(3) To help such parents or relatives to attain the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection.

(b) "Bureau of Assistance" means the Bureau of Assistance of the Department of Institutions and Agencies.

(c) "Dependent child" means a child under the age of 18, or under the age of 21 and a student regularly attending school, college or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment, who

(1) Has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or, when living with both parents, has been deprived of parental support or care by reason of the unemployment of his father or the insufficient earnings of his parents, and

(2) Is living in New Jersey with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew or niece, in a place of residence maintained by one or more of such relatives as his or their home, and

(3) Is found, after due investigation and determination, according to standards and procedures established pursuant to this act, to be in need of financial assistance.

(d) "Parent or relative with whom a dependent child is living" means a person

(1) Who is related to the dependent child, in the manner prescribed in subsection (c)(2) of this section, and

(2) With whom the dependent child is living in a place of residence maintained by one or more of such relatives as his or their own home, and

(3) Who is found, after due investigation and determination, according to standards and procedures established pursuant to this act, to be in need of financial assistance.

* * * * *

NEW JERSEY PUBLIC ASSISTANCE LAW
NJSA 44:8-107 ET SEQ.

44:8-107. Short title.

This act may be cited as the "General Public Assistance Law."

44:8-108. Definitions.

As used in this act:

"Commissioner" means the Co-ordinator of the Department of Economic Development;

"Department" means the Department of Economic Development;

"Municipality" shall include any city, borough, township, town, village or municipality governed by a board of commissioners or an improvement commission;

"Public assistance" means assistance rendered to needy persons not otherwise provided for under the laws of this State, where such persons are willing to work but are unable to secure employment due either to physical disability or inability to find employment, and includes what is commonly called "relief" or "emergency relief";

"State aid" means State aid for public assistance or relief as in this act prescribed and provided for;

"Year" means calendar year.

* * * * *

44:8-114. Municipalities to provide public assistance; administration

Every municipality shall provide public assistance to the persons eligible thereto, residing therein or otherwise when so provided by law, which shall be administered by a local assistance board according to law and in accordance with this act and with such rules and regulations as may be promulgated by the commissioner.

REGULATIONS

M. A. 1.006
Rev. 3/57

State of New Jersey

Department of Institutions and Agencies

Division of Welfare—Bureau of Assistance

Title: Reimbursement

Subject: Employability as a Condition of Eligibility

A. Citation of Statute and Constitution

Chapter 156, P. L. 1947 (R. S. 44:8-108) defines reimbursable public assistance as "assistance rendered to needy persons not otherwise provided for under the laws of this State, *where such persons are willing to work* but are unable to secure employment due either to physical disability or inability to find employment."

The Constitution of New Jersey 1947, Article I, paragraph 19, guarantees that "Persons in private employment shall have the right to organize and bargain collectively."

B. Interpretation and Policy

It may be inferred from the quoted section of the statute that persons unwilling to work are ineligible for public assistance. However, for purposes of public administration, the phrase "unwilling to work" must be defined as objectively as possible. For this purpose, therefore, it is interpreted that a person may be considered unwilling to work only when all of the elements of either (1) or (2) following are present:

(1) He is physically and mentally capable of engaging in remunerative employment or self-employment; and he refuses, without just and reasonable cause, to seek such employment or self-employment, or to make himself available for referral to, or consideration by prospective employers; OR

(2) He is physically and mentally capable of engaging in remunerative employment or self-employment; and such employment or self-employment is available to him; and he refuses, without just and reasonable cause, to accept such employment or engage in such self-employment.

At the same time, the effect of the Constitutional provision cited above must be considered. The Constitutional guarantee of the "right to organize and bargain collectively" implies the right of the individual to participate in a bona fide labor dispute as between the employer and the collective bargaining unit by which the individual is represented. Moreover, a "strike", when lawfully authorized and conducted, is recognized as an inherent and lawful element of the process of bargaining collectively and of resolving labor disputes. Accordingly, when an individual is participating in a lawful "strike," he may not be considered merely because of such participation, as refusing to work without just cause.

C. Regulations

Based on the foregoing statement of interpretation and policy, the following regulations are established:

1. Employability is a resource to be considered in determining eligibility for public assistance.

2. When it is clearly established that an individual is able to work, and that he refuses, without just and reasonable cause, to seek work, or to make himself available for referral to and consideration by prospective employers, he shall be deemed ineligible for public assistance.

3. When it is clearly established that an individual is able to work, that a specific job within his capabilities is available to him, and that there is no just and reasonable cause for a refusal to accept the job so available, if he nevertheless refuses to accept the employment, he shall be deemed ineligible for public assistance.

4. No individual shall be presumed to be unwilling to work, or to be wrongfully refusing to accept suitable employment, merely because he is participating in a lawful labor dispute.

5. An individual who is participating in a lawful labor dispute, and who is needy, has the same right to apply for public assistance, for himself and his dependents, as any other individual who is needy.

6. In the case of an applicant for public assistance who is participating in a lawful labor dispute, there shall be an investigation of need and other conditions of eligibility, and an evaluation of income and resources, in the same way and to the same extent as in all other cases. In such instances, "strike benefits" or other payments available to the individual from the labor union or other source, shall be considered a resource and shall be determined and accounted for.

7. The right of persons to bargain collectively with an employer does not imply the right to bargain collectively with the public assistance agency; and the right of individuals to apply for public assistance does not carry with it a right to apply collectively for public assistance through an agent or representative.

8. If an individual is found to be disqualified for public assistance because of wrongful refusal to seek or accept available employment (as provided in regulations No. 2 and No. 3 above), such disqualification shall not affect the eligibility of his spouse, minor children, or other persons in his household, if they are needy persons.

9. Assistance which is granted consistently with these regulations and all other eligibility conditions, to a needy person, will not be excluded from matching State aid merely because such person is engaged in a lawful labor dispute.

Department of Institutions and Agencies
/s/ Irving Engelman
Irving Engelman, Chief
Bureau of Assistance

IE/MCRd
Approved
Elmer V. Andrews, Director
Division of Welfare
Official Regulation 1.006, revised 3/57
Destroy Regulation 1.006, revised 3/1/48

NEW JERSEY ASSISTANCE TO FAMILIES OF THE WORKING POOR LAW, NJSA 44:13 ET SEQ.

44:13-1. Legislative findings.

The Legislature hereby finds and declares that it is in the public interest for the State to provide financial assistance to New Jersey families with children in which both parents are present in the home and who otherwise meet the eligibility criteria set forth in this act by virtue of inadequate income for the support of the family. The Legislature further finds that such families are a unique class, distinguishable in their composition and needs from other categories of persons benefited by other programs of assistance established by law. The Legislature further finds that such families should be entitled to receive the benefits available under the "New Jersey Medical Assistance and Health Service Act."
alb

44:13-2. Establishment of program; administration.

There is hereby enacted by the State of New Jersey a program of assistance to be known as "Assistance to the Families of the

Working Poor" which shall benefit all of the citizens of New Jersey meeting the eligibility provisions more particularly set forth in section 3 of this act. This program shall be administered by all of the county welfare boards of this State under the direction of the Commissioner of Institutions and Agencies as provided in this Title.

44:13-3. Definitions.

As used in this act and for the purposes of determining eligibility to receive financial assistance under this act, the following words shall have the following meanings:

a. "Assistance to the Families of the Working Poor" means the financial assistance and other services to be extended under this act to those families residing in New Jersey which consist of a household composed of two adults of the opposite sex ceremonially married to each other who have at least one minor child under the age of 18 residing with them, who shall be either the natural child of both, the natural child of one and adopted by the other, or a child adopted by both, and have (i) no income or insufficient income and (ii) no other resources or insufficient other resources, where such absence or insufficiency of income or resources is not the result of a voluntary cessation of employment within 90 days prior to the date of application, or the result of a voluntary assignment or transfer of property within one year prior to the time of application for the purpose of qualifying for public assistance;

b. "Adjusted gross income" means the total of monthly unearned income and monthly earned income of all employed individuals in the family, except for those individuals whose income is required to be disregarded under the provisions of this subsection, less the first $60.00 earned by each person whose income is included in adjusted gross income. In computing the income of a family as defined in this act there shall be disregarded the *earned* income of any minor child under 16, and the income of a minor child under 18 if he or she is attending on a full time basis an accredited educational institution;

c. "Insufficient income" means that the adjusted gross income of the family is less than 66⅔% of the standard applicable to the size of the applicant family established by the Division of Public Welfare for the program of aid to dependent children authorized under P. L. 1959, c. 86 (C. 44:10-1 et seq.);

d. "Other resources" means all property and assets, as otherwise defined by the Division of Public Welfare for the program of aid to dependent children authorized under P. L. 1959, c. 86 (C. 44:10-1 et seq.), legally or beneficially owned by a member or members of the families which are or can be readily made available for the use of the family;

e. "Insufficient other resources" means that other resources are insufficient as determined by standards set forth by the Director of the Division of Public Welfare pursuant to P. L. 1959, c. 86 (C. 44:10-1, et seq.); and

f. "Commissioner" shall mean the Commissioner of Institutions and Agencies.

44:13-4. Application for assistance; form; signature; other financial assistance from state; failure of father to improve employment situation.

a. A family wishing to make application for assistance under the provisions of this act shall do so by securing from the county welfare board offices an application, the form of which shall be prescribed by the Division of Public Welfare. Said application shall be completed and signed by both parents, except that if a parent is unavailable to sign the application for reasons beyond the family's control one signature will suffice. In that event the non-signatory parent shall be required to annex his signature as promptly as he is available for such purpose. Said application shall state that the amounts of assistance received by the applicants, if they are eligible, shall constitute a debt to the State of New Jersey as required by the provisions of this act.

b. No family or member thereof for whom financial assistance is being paid under the provisions of this act shall receive, during the same period, any other financial assistance from the State or any political subdivision thereof with respect to any maintenance requirements or other items for which allowance is made in the assistance grant paid pursuant to this act.

c. No family shall be entitled to receive financial assistance under this act if the father refuses, without good cause, to accept employment, better employment or training for employment or better employment.

44:13-5. Powers of commissioner; rules, regulations and orders; obtaining maximum federal aid.

Under general policies establish by the State Board of Control consistent with the provisions of this act, the commissioner is authorized, directed and empowered to issue, or to cause to be issued by the appropriate departmental officers or agencies, in accordance with the "Administrative Procedure Act" (P. L. 1968, c. 410), all necessary rules and regulations and administrative orders, and to do or cause to be done all other acts and things necessary to implement the provisions of this act. He shall endeavor to obtain the maximum possible Federal financial participation with respect to all or any portion of the program established by this act, insofar as it is feasible to do so consistently with the provisions of this act.

44:13-6. Duties of commissioner.

The commissioner is directed to do the following:

a. Require that the program of assistance provided by this act shall be uniformly administered throughout all the counties of this State;

b. Require that all families wishing to make application for assistance under this program shall have the opportunity to do so, in the manner described in this act and that assistance shall be furnished with reasonable promptness to eligible families;

c. Require that safeguards be provided restricting the use or disclosure of information concerning applicants and recipients of aid under the provisions of this act;

d. Arrange for appropriate services and cooperation with other agencies so that maximum opportunities for employment or improved employment and training for employment will be available to recipients of assistance under this program;

e. Prescribe the conditions under which financial assistance will be denied to any family in which the father refuses, without good cause, to accept employment, better employment, or training for employment or better employment;

f. Provide a procedure whereby an applicant for or a recipient of assistance under the provisions of this act shall have an opportunity to appeal an action or decision of a county welfare board to the Division of Public Welfare of the Department of Institutions and Agencies. Such appeal shall be taken within 90 days from the date of the action or decision of the county welfare board upon which the applicant or recipient bases his appeal.

NEW JERSEY UNEMPLOYMENT COMPENSATION ACT, NJSA 43:21-1 ET SEQ.

43:21-1. Short title

This chapter shall be known and may be cited as the "unemployment compensation law".

43:21-2. Declaration of state public policy

As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows: economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection

against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state requires the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed after qualifying periods of employment.

43:21-4. Benefit eligibility conditions

An unemployed individual shall be eligible to receive benefits with respect to any week only if it appears that:

(a) He has registered for work at, and thereafter continued to report at, an employment office in accordance with such regulations as the division may prescribe, except that the division may, by regulation, waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs, and as to such other types of cases or situations with respect to which the division finds that compliance with such requirements would be oppressive, or would be inconsistent with the purpose of this act; provided, that no such regulation shall conflict with subsection (a) of section 43:21-3 of the Revised Statutes.

(b) He has made a claim for benefits in accordance with the provisions of subsection (a) of section 43:21-6 of the Revised Statutes.

(c) He is able to work, is available for work, and has demonstrated that he is actively seeking work, except as hereinafter provided in this subsection or in subsection (f) of this section:

(1) No woman shall be deemed to be able or available for work during the 4 weeks immediately before the expected birth of her child or the 4 weeks immediately follow-

ing the birth of her child, in either of which cases the division may require the production of a doctor's certificate to establish such dates;

(2) The director may, in his discretion, modify the requirement of actively seeking work if, in his judgment, such modification of this requirement is warranted by economic conditions;

but no individual, who is otherwise eligible, shall be deemed ineligible, or unavailable for work, because he is on vacation, without pay, during said week, if said vacation is not the result of his own action as distinguished from any collective action of a collective bargaining agent or other action beyond his individual control.

(d) He has been totally or partially unemployed for a waiting period of 1 week in the benefit year which includes that week. When benefits become payable with respect to the third consecutive week next following the waiting period, he shall be eligible to receive benefits as appropriate with respect to the waiting period. No week shall be counted as a week of unemployment for the purposes of this subsection:

(1) if benefits have been paid, or are payable with respect thereto; provided, that the requirements of this paragraph shall be waived with respect to any benefits paid or payable for a waiting period as provided in this subsection;

(2) if it has constituted a waiting period week under Temporary Disability Benefits Law;

(3) unless the individual fulfills the requirements of subsections (a) and (c) of this section;

(4) if it has constituted a week with respect to which it is found that his unemployment was due to a stoppage of work which exists because of a labor dispute, in accordance with the provisions of subsection (d) of section 43:21-5 of the Revised Statutes.

* * * * *

43:21-5. Disqualification for benefits

An individual shall be disqualified for benefits:

(a) For the week in which he has left work voluntarily without good cause attributable to such work, and for each week thereafter until he has earned in employment (which may be with an employing unit having in employment 1 or more individuals) at least 4 times his weekly benefit rate, as determined in each case; provided, however, that no disqualification shall be applicable to a woman who left or was separated from her work solely by reason of her pregnancy.

(b) For the week in which he has been discharged for misconduct connected with his work, and for the 5 weeks which immediately follow such week (in addition to the waiting period), as determined in each case.

(c) If it is found that he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the director or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the director. Such disqualification shall continue for the week in which such failure occurred and for the 3 weeks which immediately follow such week (in addition to the waiting period), as determined:

(1) In determining whether or not any work is suitable for an individual, consideration shall be given to the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (b) If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the

individual than those prevailing for similar work in the locality; (c) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) For any week with respect to which it is found that his unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed; provided, that this subsection shall not apply if it is shown that:

(1) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute; provided, that if in any case in which (1) or (2) above applies separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in the separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises;

* * * * *

IN THE SUPREME COURT OF THE UNITED STATES

Super Tire Engineering Company: Supercap Corporation: and A. Robert Schaevitz,
Petitioners,
vs.
Lloyd W. McCorkle, et al.,
Respondent.
No. 72-1554

State of Illinois } ss:
County of Cook }

AFFIDAVIT

Harold Finkle, being duly sworn according to law, deposes and states:

1. That he is a member of the Bar of the Court of Appeals of the State of New York and that he is House Counsel for Super Tire Engineering Company and Supercap Corporation, the appellants herein;

2. That there is attached hereto as Exhibit "A" a true and complete copy of the collective bargaining agreement executed by and between Super Tire Engineering Company, Supercap Corporation and Teamsters Local Union No. 676, affiliated with the International Brotherhood of Teamsters, etc., which contract was entered into and executed on June 25, 1971, subsequent to the commencement of this action and after the six-week-long strike which precipitated the action. The contract expires in June, 1974.

/s/ Harold Finkle

Subscribed and sworn to the 19th day of November, 1973.

/s/ Nancy Swain
Notary Public

Exhibit A

AGREEMENT

between

SUPER TIRE ENGINEERING COMPANY AND
SUPERCAP CORPORATION

and

TEAMSTERS LOCAL UNION NO. 676

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INTRODUCTION:

This Agreement made by and between Super Tire Engineering Company and Supercap Corporation, hereinafter referred to as the "Employer" and Teamsters Local Union No. 676, affiliated with the International Brotherhood of Teamsters, hereinafter referred to as the "Union".

ARTICLE 1 SCOPE OF AGREEMENT

Section 1 Classifications Covered

Production	Maintenance
Service Employees	Regular Truck Drivers

located at or working from the Employer's plant in Pennsauken, New Jersey, and excluding all other employees, office clerical, driver-salesmen, guards, watchmen and supervisors.

Section 2 Transfer of Company Title and Interest

This Agreement shall be binding upon the parties thereto, their successors, administrators, executors and assigns. In the event an entire operation is sold, leased, transferred, or taken over by sale, transfer, lease, assignment, receivership, or bankruptcy proceedings, such operation shall continue to be subject to the terms and conditions of this Agreement for the life thereof.

On the sale, transfer, or lease it is understood by this Section that the parties hereto shall not use any leasing devices to a third party to evade this contract. The Employer shall give notice of the existence of this Agreement to any purchaser, transferee, leasee, assignee, etc., of the operation covered by this Agreement or any part thereof. Such notice shall be in writing,

with a copy to the local Union not later than ten (10) days prior to the effective date of sale or ten (10) days subsequent to submission to a regulatory agency, whichever is the later, at the time the seller, transferee, or leasee, executes a contract or transaction as herein described.

In the event the Employer fails to give the notice herein required and/or fails to include in a contract of sale, lease or transfer a requirement that purchaser, the transferee, or the lessee assume the obligations of this contract, the Employer shall be liable to the Union for all damages sustained as a result of such failure to give notice, or such failure to require assumption of the terms of this Contract.

Section 3 Recognition

The Employer recognizes and acknowledges that the Local Union is the exclusive representative of the employees in the classifications of work covered by this Agreement, for the purpose of collective bargaining, as provided by the National Labor Relations Act.

Section 4 Union Security

All present employees in the classifications covered in Section 1 hereof who are members of the Local Union on the effective date of this subsection or on the date of execution of this Agreement, whichever is the later, shall remain members of the Local Union in good standing as a condition of employment. All present employees who are not members of the Local Union and all employees who are hired hereafter shall become and remain currently dues paid members of the Local Union as a condition of employment on and after the thirtieth (30th) day

following the beginning of their employment or on and after the thirtieth (30th) day following the date of this Agreement. This

provision shall be made and become effective as of such time as it may be made and become effective under the provisions of the National Labor Relations Act, but not retroactively.

The failure of any person to become a member of the Union at the required time shall obligate the Employer, upon written notice from the Union to such effect and to the further effect that Union Membership was available to such person on the same terms and conditions generally available to other members, to forthwith discharge such person.

Further, the failure of any person to maintain his Union membership through current payment of his dues as required herein shall, upon written notice to the Employer by the Union to such effect, obligate the Employer to discharge such person upon seven (7) days notice thereof.

In the event of any change in the law during the term of this Agreement, the Employer agrees that the Union will be entitled to receive the maximum Union security within the intent of this Section 4 which may be lawfully permissible.

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Section 5 Hiring Additional Men

The Employer shall notify the Union when any new employees are to be hired. The Union shall have the right to send applicants for the job or jobs, and the Employer agrees to interview such applicants and give the same interview considerations to Union-sent applicants as is given to applicants from other sources.

This provision shall not be deemed to require the Employer to hire Union applicants or to preclude the Employer from hiring employees from other sources.

During the probationary period of sixty (60) consecutive calendar days, the employee may be discharged without further recourse, provided that the Employer may not discharge or discipline for the purpose of evading this Agreement, or discriminating against Union members.

After the probationary period, the employee shall be placed on the regular seniority list and his seniority date shall revert back to his first day of hire. In case of discharge within the probationary period the Employer shall notify the Local Union in writing.

Section 6 Dues

The Employer shall immediately upon payment notify the Shop Steward, or the Union if there is no Shop Steward, in writing, of any man who under this Agreement is required to be a member of the Union. Upon notice from the Union that an employee who has been employed for more than thirty (30)

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days and has failed to tender the periodic dues and initiation fees uniformly required as a condition of acquiring and retaining membership, the Employer agrees to discharge such employee upon notice from the Union to the Employer. The Employer may not discharge or discipline for the purpose of evading this Agreement or discriminating against Union members.

Section 7 Work Performed by Covered Employees Only

All work performed in any classification covered under this Agreement shall be performed solely by employees covered under this Agreement, and no work under any classification covered by this Agreement shall be performed by either the Employer or the Employer's representatives, such as managers, branch managers, dispatchers, supervisors, foremen, etc., except as training demonstrations, or to classify, identify, inspect, match ticket for, grade all work in process; make checks for quality control, supervise loading or unloading operations, and assist in emergencies due to an Act of God, not for the purpose of replacing employees within these classifications covered, or of evading this Agreement.

Section 8 Equipment Purchase Not Required

The Employer shall not require, as a condition of continued employment, an employee to purchase truck, tractor or tractor and trailer or other vehicular equipment, or that any employee purchase or assume any proprietary interest or other obligation in the business of the Employer.

Section 9 Blacklist

The Employer shall not establish or create a so-called "Blacklist", nor in any way become a party to the establishing of such

a "Blacklist" that may have for its purpose the prevention of any member of the Union obtaining employment with the Employer or other employers on account of such membership or Union activities.

ARTICLE 2 SHOP STEWARDS & COMMITTEE MEN

Section 1 Appointment and Duties

The Employer recognizes the right of the Union to designate two (2) Shop Stewards and two (2) Committee Men from the Employer's seniority lists. Each of the Stewards and Committee Men so designated by the Union shall represent a different department, i.e., Superthane Dept., Supercap Dept., Supertire Dept. and the Maintenance Dept. The authority of the Shop Stewards and Committee Men shall be limited to and shall not exceed the following duties and activities:

1. The investigation and presentation of grievances to the Employer or the Employer's designated representative, in accordance with the provisions of the Collective Bargaining Agreement.
2. The collection of dues when authorized by the appropriate Local Union action.

3. The transmission of such messages and information which shall originate with and are authorized by the Local Union or its officers provided such messages and information

(a) have been reduced to writing. If not reduced to writing are of a routine nature and do not involve work stoppages, slow downs or any other interference with the Employer's business.

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Shop Stewards and Committee Men shall have no authority to take strike action or any other action interrupting the Employer's business. The Employer recognizes these limitations upon the authority of the Shop Stewards and Committee Men and shall not hold the Union liable for any unauthorized acts. The Employer, in so recognizing such limitations, shall have the authority to impose proper discipline, including discharge in the event the Shop Stewards or Committee Men have taken unauthorized strike action, slow downs or work stoppages in violation of this Agreement.

Section 2 Super-Seniority

Shop Stewards and Committee Men so designated by the Union shall have Super Seniority at all times within their respective departments. Super Seniority shall prevail for the following purposes:

a) Layoff.

b) Recall from layoff.

c) Bidding on higher rated jobs.

d) Job preferences.

e) Overtime.

Section 3 Orders and Decisions Not to Be Made

Shop Stewards and Committee Men shall not give orders to employees nor countermand orders of Management. Further, they shall not be the sole judge in determining whether a piece

of equipment is unsafe. However, the Business Agent shall have the right to investigate any unsafe equipment and determine, along with Management, disputes regarding any unsafe equipment.

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Section 4 Investigation of Grievances

Shop Stewards and Committee Men shall be permitted to investigate, present and process grievances on the property of the Employer, within their respective departments, without loss of time or pay. Such time spent in handling grievances shall be considered working hours in computing daily and/or weekly hours worked, but all time spent in handling grievances shall be during regular working hours and in no event during overtime hours unless the Shop Steward or Committee Man is actually performing productively during overtime hours, then in that event, Shop Stewards and Committee Men shall receive their overtime hours in processing grievances. Any disputes or grievances arising within a department shall be discussed with the Chief Steward, by the Steward or the Committee Man before being processed with the Employer. If the disputes or grievances cannot be resolved between the Shop Steward or the Committee Man with the Chief Steward, then the Chief Steward and the Shop Steward or Committee Man shall discuss any such disputes or grievances with the Employer or the Employer's representative.

Section 5 Paid for Time

Whenever the Chief Steward, Steward or Committee Man is required to attend any grievance hearings with the Employer and/or with the representatives of the Union, such individual

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or individuals, but no more than two (2), shall be compensated by the Employer for all regular working time lost, not including overtime, unless such individual or individuals are scheduled to

work overtime. When a Business Agent and/or the Employer agrees to a meeting to be attended by the Chief Steward, the Steward or Committee Man from the department where such disputes or grievances occur, such individual or individuals, but in no event more than two (2), shall be compensated by the Employer for all lost regular working time and not including overtime, unless such individual or individuals are scheduled to work overtime.

Section 6 Non-Discrimination

The Employer shall not, at any time, discriminate against the Chief Steward, Steward or Committee Man because of Union activities.

ARTICLE 3 ABSENCE

Section 1 Time Off for Union Activities

The Employer agrees to grant the necessary time off, without discrimination or loss of seniority and without pay, to any employee designated by the Union, in writing, to the Employer, to act as an elected Union officer, Business Agent, Organizer, or to attend a Labor Convention.

Section 2 Leave of Absence

Any employee desiring leave of absence in excess of five (5) days from his employment shall secure written permission

from both the Union and the Employer. The maximum leave of absence shall be for thirty (30) days, and may be extended for like periods. Permission for extension must be secured from both the Union and Employer.

During the period of absence, the employee shall not engage in gainful employment in any industry. Failure to comply with this provision shall result in the complete loss of seniority rights for the employee(s) involved.

Inability to work because of proven sickness or injury shall not result in the loss of seniority rights, except as elsewhere provided in this Agreement. The employee shall make suitable arrangements with the Employer for the continuation of Health and Welfare benefits, Life Insurance, and Pension benefits.

ARTICLE 4 SENIORITY PRINCIPLE

Section 1 Seniority Shall Prevail

If the Employer establishes different starting times for employees in the same job classification and on the same shift, the senior man, (the Steward shall have top seniority in this instance), if qualified in the classification, shall have the choice. For example—where the Employer schedules one employee to commence work at 7:00 a.m., another at 8:00 a.m., and a third

at 9:00 a.m., the senior employee shall have the choice of deciding which of the three he prefers. Similarly, the qualified senior man in the same job classification shall have the choice, he shall continue on that starting time until such starting time is discontinued, or until a change is mutually agreeable to the Employer and Union. Seniority shall prevail in that the Employer recognizes the general principle that senior employees within a classification (the Steward shall have top seniority in this instance), shall have preference to choose on a permanent basis, the job where the rate is highest, provided such employee is qualified for such work. Seniority shall not give the employee the right to choose a specific unit or shift, a single run, trip or load, unless otherwise mutually agreed to.

Nothing contained in this Section shall permit the Employer to discriminate against a senior employee. Seniority shall prevail on all overtime and premium days.

Section 2 Seniority Rank and Posting

Once each year, during the month of January, Employer shall compile, submit to the Union in writing, and then post in a conspicuous place separate Seniority Lists for Super Tire, Supercap, Superthane and the Maintenance Department. Any employees hired after said posting shall have their names added to these lists, in order of date of hire, and the Union shall be notified of such additions. Any controversy over the seniority standing of any employee on a Seniority List may be submitted as a grievance.

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After he has worked for an Employer for at least sixty (60) consecutive calendar days, an employee shall gain seniority status and his seniority date on the seniority list shall revert to the first day of his sixty (60) day qualification period. No Employer shall be permitted to deprive a qualified employee of the right to gain seniority status by any subterfuge or by any refusal to hire such qualified employee when work is available. An employee may not be on the seniority list of more than one Employer under this agreement at the same time unless on continuous lay-off not less than two (2) years with no recall. In no event may an employee be entitled to holiday pay or vacation pay from more than one Employer at the same time.

Section 3 (a) Seasonal or Part-Time Work

With respect to any employees hired as seasonal or part-time employees, the Union shall be notified immediately in writing of such hires of any such seasonal or part-time employees. Such seasonal or part-time employees shall not have any time accrued any seniority rights or any fringe benefits, unless by mutual agreement between the Union and the Employer. In the event the Employer decides to hire full-time employees the Employer shall give seasonal or part-time employees the opportunity to become a full-time employee pro-

vided such employee is eligible for membership in the Union as of such time he becomes a full-time regular employee.

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Seasonal or part-time employees shall not at any time be used while there are regular employees on lay-off. Seasonal or part-time employees shall not at any time work any over-time hours involving premium pay unless all regular employees in the department and on that shift are given first opportunity to work daily overtime and on any premium days.

(b) Protection During Revocation of License

In the event a driver should suffer a revocation of his driver's license, due to his own negligence, his job and seniority shall be protected for a period not to exceed one year. In the event the employee should suffer a revocation of his driver's license because of some violation of any laws by the Employer, the Employer shall provide suitable and continued employment for such employee at not less than his regular earnings at the time of his revocation of license for the entire period of revocation of license and the employee shall be reinstated in the seniority he held prior to the revocation of his driver's license, after his driver's license is restored.

Section 4 Loss of Seniority

Seniority shall be broken and name removed from the seniority list for the following reasons:

(a) discharge for just cause;

(b) voluntary quit; all unexplained absences for three consecutive days, which shall be deemed to constitute a voluntary quit;

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(c) lay-off for two (2) years or more;

(d) failure to respond to notice of recall;

(e) unauthorized leave of absence.

Any employee who is absent because of medically certified illness or injury shall accumulate seniority for the purpose of determining his place on the seniority list, provided that habitual illness will be grounds for termination of employment. Medical certificate shall be necessary for return to duty after three (3) day absence.

Section 5 Layoff and Recall

Should it become necessary to lay employees off because of lack of business, the Employer shall resort to strict seniority on a plant-wide basis, which means the least senior employee within the plant regardless of what department he works in, shall be laid off first. When the Employer recalls laid off employees, this shall be in reverse order in the manner in which they were laid off. This means the last employee laid off shall be the first employee to be recalled.

Any employee in the plant who is laid off because of a work reduction shall have the right to bump any junior employee within the plant with no reduction in his hourly rate.

The above provision is applicable provided the employee is qualified to perform such work for which he is bumping into. In the event the Company feels that such employee is not qualified, then such employee shall have a trial period of 30 days to qualify for such job into which he is bumping.

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The Superthane Department. Any employee being laid off because of a work reduction within the plant, shall have the right to bump a junior employee in the Superthane Department to prevent layoff provided such employee is in the Employer's opinion qualified to perform all duties in the Superthane Department. It is recognized that an employee bumping into the sand blasting job in the Superthane Department to prevent layoff will have express right to do so because of a limited knowledge needed for such sandblasting job.

Maintenance Department. Recognizing the abilities and skills of duties performed in the Maintenance Department, the Union hereby agrees that other employees within the plant shall not have the right to bump employees in the Maintenance Department to prevent layoff, nor shall Maintenance Department employees have the right to bump other production employees in order to prevent layoff.

(a) Notification of Recall

The Employer, when recalling laid-off employees, shall send a telegram or registered letter to the employee's last known address (as indicated on employee's records) and the employee shall have seven (7) days to respond to such recall notice. After the employee has notified the Employer that he will return to work, the employee shall have one (1) week to adjust any other personal matters he may have. If the employee fails to

report within the one (1) week period he shall lose all seniority rights under the contract.

(a) Notice of Layoff

The Employer agrees to give one (1) week's notice, whenever making seasonal or permanent layoffs, to the Union and the Shop Steward. Notice must be given in writing. Where such required notice is not given, the Employer shall pay the employees one (1) week's wages in lieu thereof.

Section 6 Military Service

In the event that any regular employee volunteers for, or is called to active military service in the Armed Forces of the United States, such employee shall not, during the period of such service, lose his seniority rights as herein provided. Upon his discharge from such service, he shall be offered his former position, or one of like status, provided he:

(a) received a certificate of honorable discharge;

(b) is still qualified to perform the duties of his position; and

(c) applied for reinstatement within ninety (90) days after such discharge.

Employees shall receive a written leave of absence from the Employer when leaving to enter into the military forces. In the event any employee covered by this Agreement, who is a reservist in the Armed Forces of the United States, is required

to go away on maneuvers or summer encampment, for a temporary period, not to exceed fifteen (15) days in any one year, the Employer agrees to supplement his military pay with an amount sufficient to equal his regular forty (40) hour weekly earnings at the straight time rate of his job classification.

(a) Jury Duty

In the event any employee covered by this Agreement is required to serve Jury Duty, the Employer agrees to supplement his Jury Duty compensation with an amount sufficient to equal his regular forty (40) hour weekly earnings at the straight time rate for his job classification.

Section 7(a) Promotions

In promoting employees to jobs coming within this Agreement, the Employer shall have the right to select qualified persons, but as between qualified persons, preference shall be given according to departmental seniority. If the Employer in his option feels that the most senior employee requesting the job is not qualified to fill such a promotion, the Employer shall grant such employee a reasonable period of time to demonstrate his qualifications for such promotion. In no event shall the Employer be required to grant such an employee more than thirty

(30) consecutive days to demonstrate his qualifications for such promotion and the Employer may remove such employee from such promotion at any time within said thirty (30) day period and the Employer shall furnish the Union with reasonable proof that the employee is not qualified. The Employer shall not be required to extend opportunity to qualify for any promotion to more than three (3) employees. This section shall not apply to promotions to supervisory capacity. Only those jobs with a premium rate in excess of first class skill rate shall be posted by the Employer.

(b) Leaving Bargaining Unit

Any employee within the Agreement who elects to become part of management shall lose all seniority rights after thirty (30) days if the employee elects to stay in management.

If the employee decides to return to the Bargaining Unit at the end of the thirty (30) days, he may do so without loss of seniority rights.

Section 8 Mergers, Consolidations, Absorptions

In the event that the Employer absorbs the business of a private company, or is a party to a merger or a consolidation, the seniority of the employees absorbed or affected thereby shall be determined by mutual agreement between the Union and Employer.

The seniority will be discussed between the Union and Employer prior to the effective date of any merger, consolidation, or absorption, except in unusual circumstances.

In the absence of an agreement, such matter shall be submitted as a grievance, but this shall not affect takeovers or

buyouts. The seniority of employees on a takeover or buyout shall be determined by the Union and the Employer.

ARTICLE 5 MAINTENANCE OF STANDARDS

Section 1 Protection of Conditions

The Employer agrees that all conditions of the employment relating to wages, hours of work, overtime differentials, and general working conditions shall be maintained at not less than the highest standards in effect at the time of the signing of this Agreement; and the conditions of employment shall be improved wherever specific provisions for improvement are made elsewhere in this Agreement. It is agreed that the provisions of this Section shall not apply to inadvertent or bona fide errors made by the Employer or the Union in applying the terms and conditions of this Agreement if such error is corrected within ninety (90) days from the date of error.

This provision does not give the Employer the right to impose or continue wages, hours, or working conditions less than those contained in this statement.

Section 2 Extra Contract Agreements

The Employer or employee shall not enter into any agreement or contract with his employees or his Employer individually or collectively which in any way conflicts with the terms and

provisions of this Agreement. Any such Agreement shall be null and void.

Section 3 Work Week Reduction

In the event that the maximum work week is reduced by legislative act to a point below the regular work week provided herein, the contract shall be reopened for wage negotiations only.

Section 4 New Equipment or Operations

Where new types of equipment and/or operations for which rates of pay are not established by this Agreement are put into use after June 25, 1971, within operations covered by this Agreement, rates governing such operations shall be subject to negotiations between the parties. Rates agreed upon or awarded shall be effective as of the date equipment or operations are put into use.

ARTICLE 6 GRIEVANCES

Section 1 Grievance Machinery

All grievances or disputes arising under the terms of this Agreement shall be handled in the manner provided by the following sections:

First Step. In the case of any such grievance or dispute, the Departmental Shop Steward or Committeeman shall take the matter up with the Employer or the Employer's representative within ten (10) working days after such grievance or dispute

becomes known and every effort shall be made to reach a mutually satisfactory solution.

The Departmental Shop Steward or Committeeman where the grievance had arisen, shall take the matter up with the Employer or Employer's representative. The Departmental Shop Steward or Committeeman may, if necessary, request the aggrieved to be present when discussing such matter with the Employer.

When a grievance has arisen and is presented to the Employer in the first step of the grievance procedure, the Employer shall within five (5) working days, give his answer to the grievance, in writing.

Second Step. If no solution can be reached, the Departmental Shop Steward or Committeeman shall refer the matter to the Business Agent, and the Business Agent may within fifteen (15) working days, take the matter up with the Employer or Employer's representative in an endeavor to adjust it amicably with the Departmental Shop Steward or Committeeman from such department where the grievance had arisen, is present.

Third Step. If the Business Agent of the Union and the Employer or Employer's representative cannot reach a mutually satisfactory solution, the grievance shall within fifteen (15) working days be submitted to the President of the Union and the Personnel Director of the Employer.

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Fourth Step. Should the President of the Union and the Personnel Director fail to come to any mutual agreement on such grievance or dispute, such grievance or dispute shall be submitted to a disinterested arbitrator, who is mutually agreed upon between the Employer and the Union. In the event the Employer and the Union cannot agree on a disinterested arbitrator then the matter shall be submitted to the New Jersey State Board of Mediation Service for a selection of arbitrators; and such selection shall be by mutual agreement by the Employer and the Union.

The arbitrator shall within thirty (30) days of the closing of such hearing render a decision or decisions in such matter or matters which decision or decisions shall be final and binding on the parties.

The cost of the arbitrator shall be borne equally between the parties.

Section 2 Inspection Privileges

(a) Access to Premises

Authorized agents of the Union shall have reasonable access to the Employer's premises at any time during working hours

upon prior notice for the purpose of adjusting disputes, investigating working conditions, collection of dues, and ascertaining that the Agreement is being adhered to.

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(b) Inspection of Payroll Records

Whenever a complaint is made concerning the wages, vacations and/or holidays of an employee, an authorized representative of the Union shall have the right to inspect Employer's payroll and time cards of the employee during the Grievance Procedure.

ARTICLE 7 PROTECTION OF RIGHTS

Section 1 Picket Lines

It shall not be a violation of this Agreement, and it shall not be cause for discharge or disciplinary action in the event an employee refuses to enter upon any property involved in a primary labor dispute, or refuses to go through or work behind any primary picket line, including the primary picket line of Unions party to this Agreement, and including primary picket lines at the Employer's places of business.

ARTICLE 8 SEPARATION OF EMPLOYMENT

Upon discharge, the Employer shall pay all monies due to the employee. Upon quitting, the Employer shall pay all monies due the employee on the payday of the Employer in the week following such quitting. Upon discharge or quitting the employee shall immediately pay to the Employer all monies owed by him to the Employer and the Employer may deduct any such monies from any wages due the employee upon discharge or quitting.

ARTICLE 9 FIDELITY BONDS

Should the Employer require any employee to give bond, cash bond shall not be compulsory. Any premium involved shall be paid by the Employer. The primary obligation to secure the bond shall be on the Employer. The Employer shall have the right to require of each applicant for a job that he fill out a job application and a bond application. Should the Employer require a bond, the cost of this bond through the Employer's regular bonding company, shall be borne by the Employer.

In the case of any employee hired on or after .....,
if the Employer cannot arrange for a bond through his regular bonding company, the Employer must notify the employee and the Union, in writing, that the employee has thirty (30) days in which to secure a bond satisfactory to the Employer. During the thirty (30) days, the employee shall be afforded the opportunity of working in some non-bondable work if such work is available. If the employee secures bond satisfactory to the Employer within thirty (30) days, the standard premium only in such bonding arrangements shall be paid by the Employer. Standard premium is that premium paid by the Employer for bonds applicable to other employees of the Employer in similar classifications. Any excess premium above this standard premium is to be paid by the employee. If the employee fails to secure bond within thirty (30) days, his employment shall cease.

Should the bond of an employee hired after .....
be cancelled, the employee shall be suspended, without pay. During the next thirty (30) days, the employee will be given the

opportunity to secure a bond satisfactory to Employer. If the employee secures bond satisfactory to Employer within thirty (30) days, employee shall be returned to his job with seniority rights restored. If the employee secures such bond, the standard

premium only, in such bonding arrangements, shall be paid by the Employer. Any excess premium above standard premium is to be paid by employee. If the employee fails to secure bond satisfactory to Employer within thirty (30) days, his employment with Employer shall be considered as having been terminated as of the date of the cancellation of the bond.

Article 10 Compensation and Insurance

Section 1 Compensation Claims

The Employer agrees to cooperate towards the prompt settlement of employees on-the-job injury claims when such claims are due and owing.

Section 2

The Employer shall provide employees with Workmen's Compensation Insurance, social security, temporary disability insurance, and unemployment insurance, as required by Federal and State law.

Article 11 Conditions of Work Safety

Under no circumstances will an employee be required or assigned to engage in any activity involving dangerous conditions of work, or danger to person or property, or in violation of any applicable statute or court order, or in violation of a government regulation relating to safety of person or equipment. The term "dangerous condition of work" does not relate to the type of cargo which is hauled or handled.

The Employer further agrees to cooperate to the fullest extent possible in all safety campaigns or projects in which the Union may see fit to take official part. At least twice each year of this Agreement the Employer will make available instructions in

safety and first aid for his employees. The Employer and the Union will discuss arrangements for same.

Upon completion of this contract, the Union and the Employer shall meet and make arrangements for a safety committee comprising of two (2) representatives from the Employer and two (2) representatives from the Union; namely, employees, to establish rules and regulations.

Article 12 Reports of Defective Equipment

Employees shall immediately, or at the end of their shift, report all defects in equipment. Such reports shall be made on a suitable form furnished by the Employer and shall be made in multiple copies, one (1) copy to be retained by the employee. The Employer shall not ask or require any employee to take out equipment that has been reported by another employee as being in an unsafe operating condition until same has been approved as being safe by management or the mechanical department.

When the occasion arises where an employee gives written report on forms in use by the Employer of a vehicle being in an unsafe working operating condition, and receives no consideration from the Employer, he shall take the matter up with the Union.

No employee shall be required to pay for loss or damage unless it shall first be proven that such loss or damage was caused by the employee's negligence or improper act and not by that of the Employer. No deduction shall be made from any

employee's pay at any time for any loss or damage to equipment. All matters arising under this paragraph shall be first disposed of between the Union and the Employer before any penalty be imposed and a warning letter shall be the prescribed penalty for a first offense. All employees will be held responsible for the proper care and maintenance of their equipment and the facilities. Any willful neglect on the part of the em-

ployee or any act performed in defacing equipment or facilities will be subject to disciplinary action. Tools may be assigned to employees and employees held responsible for them.

Article 13 Accidents and Reports

Section 1 Reporting Accidents

Any employee involved in an accident shall immediately report said accident and any physical injuries sustained. When required by the Employer, the employee, before going off duty and before starting his next shift, shall make out an accident report in writing on company time, on forms furnished by the Employer, and shall turn in all available names and addresses of witnesses to the accident.

Section 2 Injury on the Job

(a) Any employee sustaining injuries which are compensable under the Workmen's Compensation Act, but which do not prevent him from performing his usual duties, but require that he visit the offices of Employer-designated physicians for the purpose of obtaining further treatment during working hours, shall suffer no loss of wages because of such visits.

(b) Any employee sustaining injuries which are compensable under the Workmen's Compensation Act which prevent him from performing all work available to him, at Employer's place, shall sustain no loss of pay for the balance of the day on which he was injured. Ability to perform work shall be determined by doctor and/or hospital report.

Article 14 Meal Periods

Section 1 Lunch Period

All employees shall receive a lunch period at the end of the fourth hour of work. The lunch period shall be one-half (½) hour. Any employee required to work during more than fifteen minutes after the start of his lunch period shall receive time and one-half for such lunch period, and may not be dismissed one-half hour earlier, but shall work the necessary hours whereby producing one-half hour overtime at the end of his working day.

Any employee who is required to work through his lunch period, as stated above, shall be afforded a twenty-minute break period to eat his lunch, on Company time, after the fourth hour and not later than the fifth hour.

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Section 2 Supper Period

Any employee required to work in excess of two (2) hours overtime in any one (1) day shall be afforded a twenty (20) minute break period on Company time.

Article 15 Discharge or Suspension

Section 1 Cause for Dismissal or Suspension

No employee may be dismissed or suspended without just cause. Nothing shall prohibit the Union from investigating any dismissal or suspension and resorting to the Grievance Procedure provided in this Agreement.

Until the case has been discussed with the Business Agent, no employee may be dismissed or suspended except where the provisions of this Section provide for immediate dismissal.

In the event that it is decided, as provided in the Grievance Procedure set forth in this Agreement, that the suspension or

discharge was without just cause, the decision shall provide for reinstatement with or without back pay. If the decision directs reinstatement with pay, the Employer shall not receive any credits for wages or compensation earned by the employee while he was out of the Employer's employ. Except where an emergency prevents it, grievances concerning dismissal or suspension shall be advanced over all other matters pending for grievance

hearings, and shall be promptly heard. Except in the case of immediate dismissal for the causes set forth below, no employee may be dismissed or suspended for his first offense, but shall receive at least one written warning. Warning notice for absence or lateness must be given within five (5) work days; warning notice for all other violations must be given within three (3) work days following day of violation. The parties agree that causes for dismissal without first discussing the matter with the Business Agent shall be the following:

(1) Calling or participating in any unauthorized strike, work stoppage, or walk-out.

(2) Drunkenness, proven drinking during working hours, or being under the influence of alcohol or unlawful narcotics during working hours.

(3) Theft or dishonesty.

(4) Assault on his Employer or his Employer's representative during working hours.

(5) Carrying unauthorized passengers in Employer's vehicle.

(6) Assault by an employee against his fellow workers during working hours.

(7) Deliberate vandalism or defacing Company property and equipment, or, in this case, in lieu of discharge, financial action may be taken against the employee.

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In each instance, the Employer shall promptly notify the Union of the action taken, in writing, promptly upon such action.

The parties agree that a dismissal or suspension shall not be subject to the Grievance Procedure or arbitration as provided in this Agreement unless the Union shall have notified the Employer in writing of the intention to do so within two (2) weeks of the dismissal or suspension. The parties recognize that in interpreting previous agreements there have been difficulties over whether or not the Employer may dismiss employees for slow-downs. The parties agree that this matter is cause for discharge.

Section 2 Warning Notices

Warning notices shall not remain in effect for a period of more than six (6) months from the date of such warning notice. An employee shall not be suspended until the Local Union has been given forty-eight (48) hours written notice. Saturdays, Sundays and Holidays shall be excluded in determining the forty-eight (48) hour period.

ARTICLE 16 DISCRIMINATION

There shall be no discrimination by the Employer against his employees because of Union activities; nor shall there be any discrimination against any employee because of race, color, creed, sex, age, or nationality, in the placement and retention of employment, or in the hours, wages or working conditions of the employees.

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ARTICLE 17 SUBCONTRACTING

The Employer agrees that it will not cease or refrain from handling, using, transporting or otherwise delivering any products

of any other employer or cease doing business with any other person, or wherein any other obligation imposed by the Motor Carrier's Act or other applicable law as a result of an individual employee exercising their rights under this agreement or under the law, but the Employer shall not withstanding any other provision in this agreement, when necessary, continue doing business by other employees. For the purpose of preserving and protecting work and job opportunities under this agreement, and for the duration of this agreement, the Employer agrees that it will not subcontract, transfer, lease, assign or convey, in whole or part, any work presently being performed under this contract, work to any other plant, division, or any other operations within the department covered by this agreement, or to non-unit employees, unless all regular full-time employees in a department are given work opportunities including any and all laid off employees. In the event the Employer subcontracts out work from any department and subsequently thereafter employees are laid off from any department because of such subcontracting of work, then the employer shall return such work to the department affected to prevent layoff of employees.

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Article 18 Work in Other Classifications

Employees who are required to work in more than one job classification during their working hours of any day shall be paid for that entire day at the rate of the highest job classification worked.

Article 19 Work Assignments

Except as to past practice, the Employer shall not direct, require or permit employees other than the employees within the bargaining unit here involved to perform work which is recognized as the work of the employees falling within the scope of this Agreement, or direct, require or permit employees who are covered within this Agreement to perform work which does not fall within the scope of this Agreement.

Article 20 Paid for Time

Section 1 General

All employees covered by this Agreement shall be paid for all time spent in the service of the Employer.

Section 2 Break Periods

All employees shall receive a ten (10) minute break period in the a.m., and a ten (10) minute break period in the p.m., without loss of pay.

Section 3 Death in Family

In the event of a death in an employee's immediate family (which consists of parents, wife, husband, children, brothers, sisters, mother-in-law, father-in-law or grandparents) the employee shall be allowed three (3) days leave with three (3)

days straight time pay, provided that he shall receive no pay unless the day of burial falls on a regular work day and not on days off, holidays, vacations, Saturdays or Sundays.

Section 4 Holidays

The parties recognize the following holidays:

New Year's Day	Fourth of July	Day after Thanksgiving
Good Friday	Labor Day	Christmas Eve Day
Decoration Day	Thanksgiving Day	Christmas Day
	New Year's Eve Day	

New Year's Eve Day

Effective May 15, 1972, each employee shall be granted one personal holiday, in addition to the foregoing holidays, each subsequent year of this Agreement. This personal holiday shall

be taken at the employee's discretion, upon at least two (2) weeks' notice to the Employer, with the Company's approval. The Employer shall have the right to limit the number of employees taking a personal holiday at any one time.

A. Seasonal or part-time employees shall not be eligible for holiday pay.

B. Any holidays under this Agreement falling on Saturday shall be celebrated on the preceding day Friday.

C. Any holidays covered under this Agreement falling on Sunday shall be celebrated on the following Monday.

D. All employees absent from work due to a medically certified legitimate illness or injury shall be entitled to all holidays covered under this Agreement.

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E. Any employee on the seniority list who does not work on any of the holidays stipulated in this Agreement shall receive his regular wage rate for the holiday.

F. In order to be eligible for a holiday with pay an employee must work the scheduled full work day preceding the holiday and the scheduled full work day following the holiday.

Section 5 Sick Leave

The Company shall allow five (5) days sick leave per year per employee, with pay, for legitimate, medically certified illness or injury after the employee is absent five (5) working days.

For example, if a man is sick six (6) consecutive days, Employer would pay for one (1); seven (7) consecutive days, Employer would pay for two (2); eight (8) consecutive days, Employer would pay for three (3); nine (9) consecutive days, Employer would pay for four (4); the (10) consecutive days, Employer would pay for five (5).

Section 6 Time Studies

The Employer may conduct time studies and require daily work sheet reports to maintain efficient operation and to enable the Employer to establish incentive programs in certain areas where such incentives could further reward employees with increased earnings.

ARTICLE 21 VACATIONS

Vacations shall be computed from the anniversary date of employment from year to year. Employees continuously in the service of the Employer for one (1) year shall be entitled to one (1) week's vacation, with pay.

Employees continuously in the service of the Employer for two (2) years shall be entitled to two (2) weeks' vacation, with pay.

Employees continuously in the service of the Employer for ten (10) or more years shall be entitled to three (3) weeks' vacation, with pay.

Employees continuously in the service of the Employer for fifteen (15) years or more shall be entitled to four (4) weeks' vacation, with pay.

Employees continuously in the service of the Employer for twenty-two (22) or more years shall be entitled to five (5) weeks' vacation, with pay.

In a vacation week in which one of the holidays named occurs, an employee on vacation shall receive an extra day's pay for eight (8) hours at his or her straight time rate for the holiday.

ARTICLE 22 REOPENING EMERGENCY

In the event of Congressionally declared war or imposition of economic controls during the life of this Agreement, either

party may re-open same upon sixty (60) days written notice and request re-negotiations of matters dealing with wages and hours.

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Upon the failure of the parties to agree in such negotiations, either party shall be permitted all lawful economic recourse to support their request for revisions. If governmental approval of revisions should become necessary, all parties will cooperate to the utmost to attain such approval. The parties agree that the notice provided herein shall be accepted by all parties as compliance with the notice requirements of applicable law, so as to permit economic action at the expiration thereof.

Article 23 Check-off of Dues

Upon receipt of proper written authorization of any employee, the Employer will deduct from the wages due such employee, on the first pay week of each month, his Union initiation fees and monthly dues, as are from time to time fixed by the local Union, in accordance with the Constitution and By-Laws of the Local Union, and certified to the Employer by the Secretary-Treasurer of the Local Union as being so fixed, and will forward the aggregate amount of such deductions promptly each month to the Secretary-Treasurer of the Union or other duly authorized representative designated by the Union.

When an employee who is on check-off is not on the payroll during the week which the deduction is to be made or who has

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no earnings or insufficient earnings during that week or is on leave of absence, the employee must make arrangements with the Union to pay such dues in advance. The Employer will recognize authorization for deductions from wages, if in compliance with State law, to be transmitted to the Union or to such other organizations as the Union may request if mutually

agreed to. No such authorization shall be recognized if in violation of State or Federal law. No deduction shall be made which is prohibited by applicable law.

Article 23A Check-off of Drive

With the consent of any employee, the Employer will deduct from the employee's pay the sum of Five Dollars ($5.00) per year, effective at such time the employee signs an authorization card.

Article 24 Wages and Hours

Section 1 General

The Union agrees that the Employer shall be entitled to "a day's work for a day's pay."

The regular work week shall consist of five (5) days of eight (8) hours each, exclusive of the meal period, Monday through Friday.

Any employee who is called in to work, except as elsewhere provided, or who starts to work on any day, shall be paid for a full day's work at eight (8) hours; provided that if the Union supplies help not having experience in the particular type of work for which supplied, and such help shall prove unsatisfactory

after less than eight (8) hours of work, Employer shall be obligated to pay such employee only for the time actually worked.

Section 2 Pay Period

All regular employees covered under this Agreement shall be paid in full each week. Not more than one week's pay shall be held on an employee. Where less than one week's pay is now held, Employer may not increase the amount held until the change has been discussed with the Union. All other employees shall be paid at the end of their working period.

Section 3 Pay Day

When the regular pay day occurs on a holiday, the Employer shall pay the employees on the regular work day immediately preceding the holiday.

Section 4 Statement of Earnings

Each employee shall be provided the statement of gross earnings, and an itemized statement of all deductions made for any purpose.

Section 5 Wages—Shift Differential

All employees working the second shift shall receive a shift differential of 12¢ per hour.

All employees working the third shift shall receive a shift differential of 18¢ per hour.

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Section 5(a) Lie Detector Test

The Company shall not require, request or suggest that an employee take a polygraph or any other form of lie detector test, unless by voluntary consent and notification to the Business Agent.

Section 6 Wages

	6/25/71	5/15/72	5/15/73
Recappers:			
Starting Rate	$2.60	$2.70	$2.80
2nd Class (after 60 days in starting rate)	2.80	2.90	3.00
1st Class (after 120 days in 2nd Class)	3.50	3.70	3.90
Working Leader	3.70	3.90	4.10

Road Servicemen-Servicemen-Truck Drivers:			
Starting Rate	2.60	2.70	2.80
2nd Class (after 60 days in starting rate)	2.80	2.90	3.00
1st Class (after 120 days in 2nd Class)	3.50	3.70	3.90
Working Leader	3.70	3.90	4.10
Tractor Trailer Driver	3.60	3.80	4.00
Straight Truck Driver away overnight or going to a destination 60 miles from Pennsauken Plant.			
Maintenance Men:			
Apprentice Trainee	2.60	2.70	2.80
3rd Class Skills	2.90	3.00	3.10
2nd Class Skills	3.35	3.45	3.55
1st Class Skills	3.76	3.96	4.16
Working Leader	3.96	4.16	4.36

Employees with five (5) years of service as of May 14, 1971, will receive an additional 5¢ per hour. This does not apply to any employees accumulating five (5) years of service subsequent to May 14, 1971.

The two shop stewards shall be paid at floor leader's rate of pay applicable in the department in which they work. This does not apply to Committeemen.

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Section 7 Overtime

The work shall consist of five (5) days of eight (8) hours each, Monday through Friday.

For all hours worked on Saturday, an employee shall be paid at the rate of one and one-half (1½) times the rate for the

job. The Employer guarantees six (6) hours on Saturdays, Sundays and holidays to employees called in to work, provided that if an employee voluntarily works less, he will be paid for what he actually works.

Further, if an employee who is called in to work on a Saturday, Sunday or holidays, fails to report for work at the scheduled starting time or fails to call his superior at least one (1) hour prior to the scheduled starting time informing him of his unavailability, such failure to report or call shall constitute an unexcused absence. For all hours worked on Sunday, an employee shall be paid at the rate of two (2) times the rate for the job. For all hours worked on holidays, an employee shall be paid at the rate of two (2) times the rate for the job in addition to the holiday pay.

For all hours worked in excess of eight (8) in a day an employee shall be paid at one and one-half (1½) times the rate for the job. For all hours worked in excess of thirty-two

(32) in a week when a holiday occurs, an employee shall be paid at one and one-half times the rate for the job.

Except as otherwise specifically provided elsewhere in this Agreement, no employees shall be entitled to receive overtime pay, except for overtime actually worked.

An employee will be paid for the day at the highest rate of pay in classification worked.

Section 8 Shifts Ending on Holidays or Weekends

Employees who are assigned to work on their regular shift, on an evening prior to a holiday, and whose work ends on the holiday, shall work the hours necessary to complete that day's work at the regular rate. All hours worked in excess of eight (8) hours will be at the holiday rate. Employees who are assigned to work on their regular shift on a Saturday evening,

and whose work ends on Sunday, shall work the hours necessary to complete that day's work at the Saturday rate. All hours worked in excess of eight (8) hours will be at the Sunday rate. Any employee required to work in excess of eight (8) hours

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in any day, Monday through Friday or in excess of forty (40) hours per week shall receive time and one-half.

Article 25 Management Security

The Union recognizes that the Employer covered by this Agreement must compete and keep abreast of developments in methods of distribution, and must operate efficiently and economically, if he is to be able to meet rising costs of operation, including rates of pay and working conditions to members of the Union. Accordingly, the Union agrees that it will cooperate with the Employer to the end that his business may be operated efficiently, and further agrees that it will not interfere in any way with the Employer's right to operate and manage his business, provided that nothing herein will permit the Employer to violate any of the terms and/or conditions of this Agreement.

If the Steward or employees feel that the Employer in any way violates this Agreement, the matter shall be handled in the manner outlined by the Grievance Procedure in this Agreement.

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Article 26

(a) Savings and Separability Clause

The parties to the Agreement believe it complies with the Labor-Management Act of 1947. Accordingly, it is agreed that nothing contained in this Agreement shall require Union

or Employer to do anything which violates the law. The parties agree that all of the clauses of this Agreement shall be severable. Any clause which may be prohibited by, invalid under, or in contravention of any operable Federal or State law, or under which Employer or Union is required to do any act which is in contravention of any Federal or State law, shall be null and void, but in such event the remaining clauses shall continue in full force and effect for the terms of this Agreement, and any renewal thereof.

The parties agree, in good faith, to attempt to replace any such null and void clause with a clause which conforms with the law.

The parties further agree that if during the term of this Agreement or any renewal thereof any such null and void clause shall become legal or permissible by legislative enactment, a subsequent decision of the courts or otherwise, such null and void clause shall again become part of this Agreement.

Any disagreement shall be submitted to the Grievance Procedure.

(b) Terms and Provisions Binding

The Employer and Union who are party to this Agreement agree to be bound by all of the terms and provisions of the

Agreement, and the interpretations and enforcement thereof, and do further agree to participate in negotiations of any modification or renewal of the contract.

ARTICLE 27 GENERAL

Section 1 Posting of Notices

The Employer agrees to the posting, within his business premises, of notices of Union meetings, etc.

Section 2 Wage Executions

In the event of notice to the Employer of a garnishment or impending garnishment the Employer may take disciplinary action, in accordance with past practice, to the extent permitted by Title III of the Federal Consumer Credit Protection Act and the laws of the State of New Jersey.

Section 3 Company Rules

Employer may establish such rules as he deems necessary or desirable provided that such rules are not in conflict with the terms and provisions of this Agreement. A copy of such rules shall be sent promptly to the Union and will become effective only if mutually agreed to by the Employer and the Union. However, Company rules in effect at the time of this Agreement, whether or not reduced to writing, shall continue in effect unless inconsistent with this Agreement.

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Section 4 Uniforms and Safety Shoes

Employer agrees that if any employee is required to wear any kind of uniform as a condition of his continued employment, such uniform shall be furnished by the Employer, free of charge but subject to a nominal deposit, at the standard required by the Employer. No employee shall be required to wear any uniform which does not bear the Union label. Once each year, on the anniversary date of the employee's employment, the Employer shall pay to the employee upon request the sum of $15.00 as annual allowance for the purchase of safety shoes.

Section 5 Sanitary Conditions

The Employer shall provide suitable sanitary conditions for his employees, such as toilets, and hot and cold running water.

Section 6 Mutual Guarantees

When Employer and Union shall have agreed in writing upon interpretations of this Agreement or uniform rules and regulations for the conduct of employees, such interpretations or rules and regulations shall be regarded as a part of this Agreement.

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ARTICLE 28 HOSPITALIZATION AND LIFE INSURANCE

Section 1

The Employer will provide a major medical program with the following features:

Major Medical

With $20,000 Maximum Per Individual

Hospital:	Pays first $3,000 in full and 80% of any additional amount.
	Includes charges for room and board (semi-private), operating room, drugs, x-rays, laboratory tests, anesthetics, local ambulance, emergency out patient care, etc.
Surgical:	Up to $600 according to schedule (any charges in excess of schedule are included with other eligible expenses) per 24-hour period.
Hospital-Medical:	$5 per day from the first day through the 120th day.
	Any charges in excess of the above included as an eligible expense under major medical.
Maternity:	$600 maximum for normal delivery. (Complicated deliveries are eligible for $3,000, 80% etc.)

X-Ray & Lab Out of Hospital:	Up to $75 per year on a scheduled basis (any charges in excess of the above are included with other eligible charges).
Other Eligible Charges:	Pays 80% up to $20,000 total after $100 deductible per person, per year (maximum of two deductibles per family for all illnesses and accidents; one deductible per family for same accident).
Private Duty Nursing Care:	Included as eligible expense.
Physiotherapy:	Included as eligible expense.
Drugs & Medicines Outside Hospital:	Included as eligible expense.

Other Medical Equipment such as artificial limbs, eyes, wheelchair, etc.:	Included as eligible expense.
Radiation Therapy:	Included as eligible expense or covered under hospitalization if charged by hospital.
Radium Therapy:	Included as eligible expense or covered under hospitalization if charged by hospital.
Exclusions:	Governmental care. Charges incurred due to an act of war while insured. Cosmetic surgery unless for an accident while insured. Examination for glasses or hearing aid. Most dental treatment except that due to accident. Doctors charges for certain foot conditions. Occupational injuries or disease covered by Workmen's Compensation.

Medical Benefit

As a separate benefit, the plan will provide, in addition to the basic plan, benefits for doctor's calls as follows:

a. Total disability is not required.
b. Benefits will begin on the fourth call, whether for accident or sickness disability.
c. Employees and all eligible dependents will be covered.
d. A separate series of calls begins when any two consecutive calls are separated by more than twenty (20) days.
e. Benefit level:
   $6.00 for Home or Hospital visits
   $4.00 for Office visits
   Limit of 70 calls per year; i.e., $280.00 to $420.00 in benefits.

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Section 2

Employer shall provide and pay for a Six Thousand Dollar ($6,000) Life Insurance Policy, with Double Indemnity, for each employee covered under this Agreement.

ARTICLE 29 PENSION PLAN

All regular full-time employees become a member after one (1) year of service.

All regular full-time employees with one (1) year of service on January 1, 1962, automatically became participants under the Plan.

The Employer pays the entire cost of all benefits provided under the Plan.

Employee may retire on what is called the Normal Retirement Date which shall mean the first day of January following his 65th birthday or ten (10) years after the effective date (January 1, 1962) whichever occurs later. The retirement

of an employee, however, may be deferred from year to year for one year at a time at the request of the employee and with the approval of the Employer.

An employee having attained age 55, but not age 65, and having twenty (20) or more years of Continuous Service may, upon approval of the Employer, retire on the first of January thereafter. However, if he retires early, his pension will be reduced, because it will begin at a younger age and will be payable for a longer period.

If an employee retires on or after his Normal Retirement Date and has completed ten (10) years or more of Continuous Service, he shall, upon application, be entitled to receive a

monthly benefit equal to $4.00 times the years of Credited Service accumulated to his Normal Retirement Date. Credited Service used in calculating benefits hereunder shall be computed on the basis of full years only and any fractional year in excess of the total number of full years shall be ignored.

In the event an employee's retirement is deferred on a year-to-year basis, the funds accumulated to provide his retirement benefit shall at Normal Retirement Date be set aside at interest (with a rate of 2% per annum guarantee) until his actual retirement or sooner death. At such time the said funds will be used to provide whatever increased retirement benefit such amount of money may then purchase or if the employee has died the said funds will be paid over to his beneficiary. An employee whose retirement is deferred will not accumulate credited service beyond his Normal Retirement Date. If an employee satisfies the requirements as stated, he may, upon approval by the Employer, retire on the first of January thereafter. He would receive an immediate pension equal to the normal retirement benefit reduced by 4/10 of 1% for each month that the early retirement date precedes Normal Retirement Date.

If, after having completed five (5) or more years of Continuous Service, an employee becomes totally and permanently disabled for a period of twenty-six (26) consecutive weeks, he shall be eligible for a disability retirement pension commencing

on the first of the month following the determination of such disability.

An employee shall be deemed to be totally and permanently disabled when sufficient medical evidence indicates that he is totally and permanently prevented from engaging in any position available with the Employer as a result of bodily injury or disease except such employment as is for the purpose of rehabilitation. An employee shall not be deemed disabled if it is determined that his incapacity consists of chronic alcoholism or addiction to narcotics or that such incapacity was connected, suffered or occurred while he was engaged in felonious enterprise or resulted from an intentionally inflicted injury or resulted from service in the Armed Forces of any country for which a service connected disability benefit is possible. Any disability pensioner prior to age 65 may be required to submit to medical examination at any time but not more often than six-month intervals to determine whether he is eligible for continuance of the disability pension. In the event the employee fails within thirty (30) days after notice to submit to medical examination, his pension shall be discontinued until he submits to examination.

The monthly pension for any employee who shall retire on a disability pension shall be whatever benefits are obtainable from the application of the funds accumulated through December 31st of the preceding year plus interest thereof at the rate

of 2% per annum from January 1st of the preceding year plus interest thereof at the rate of 2% per annum from January 1st of the year of retirement to actual retirement date.

If an employee terminates his employment with the Employer after having attained age 30 and having completed five (5) or more years of Continuous Service for reasons other than retirement, death or permanent and total disability he shall, if such termination is caused by his inability to meet the requirements of his position with the Employer and to qualify for transfer to any other available position with the Employer (and not otherwise) be entitled to a severance benefit commencing on his Normal Retirement Date and calculated as follows:

Such deferred benefit as may then be obtainable by the application of the following percentages of the funds accumulated through December 31st of the year preceding such termination (including contributions by the Employer with respect to such year):

Number of Years of Continuous Service	Percentage of Pension Vested
0—4th year	0%
5th—10th year	2%— 12%
11th—15th year	14½%—24½%
16th—40th year	27½%—99½%
41st year	100%
42nd and later years	100%

Notwithstanding the foregoing, any employee who shall have attained age fifty-five (55) and shall have completed twenty

(20) or more years of continuous service, shall be entitled upon termination of employment for any reason other than proven dishonesty or disloyalty or employment by a competitor to receive the same benefit to which he would be entitled under Early Retirement, had he been permitted early retirement, but in the event of such termination he shall receive his benefit commencing at Normal Retirement Date and shall not be entitled to receive an immediate benefit.

If retirement occurs on the Normal Retirement Date, the first

monthly payment of the retired employee's retirement benefit shall be payable as of the Normal Retirement Date except as provided for deferred benefits in case of early retirement or severance, if retirement is at a date other than at the Normal Retirement Date, the first monthly payment shall be as of the day on which the employee actually retires hereunder. Thereafter the benefit shall be payable as of the first day of the month during his life. The normal benefit provided under this plan is a monthly annuity for life and without refund. However, an employee, prior to his actual retirement via normal retirement, deferred retirement, early retirement or disability retirement or severance, may elect:

(a) to receive a lump-sum payment.

(b) to receive a reduced pension payable during his lifetime with provision for payment over a certain and continuous period of ten (10) fifteen (15) or twenty (20) years to himself or surviving beneficiary.

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(c) for continuation of ½, ⅔ or the full amount of such reduced pension (as the employee shall elect) after his death and during the lifetime of his spouse. The amount of such pension shall be the actuarial equivalent of the pension as applicable and shall be calculated in accordance with actuarial tables recommended by the actuaries and approved by the Personnel Department.

The retirement benefit of any retired employee shall cease as of the date of return if the retired employee is reemployed by the Employer and shall resume as of the first of the month of his subsequent retirement and retirement benefit payable upon such subsequent retirement shall be on the basis of his aggregate credited service at the time of his subsequent retirement.

Article 30 Part-Time Employees

The employment of students as part-time help will not be used to deprive regular employees of overtime. School students must pay an initial fee of Twenty-five Dollars ($25.00) after

the completion of thirty (30) days of employment plus monthly dues. If students are employed beyond September 15, they will be required to pay the additional $25.00 initiation fee.

No fringe benefits will be paid part-time, casual or seasonal employees.

Article 31 Christmas Bonus

All employees will be paid a Christmas bonus on or about December 15, to be computed on the basis of Five Dollars

($5.00) per year of service completed on the immediately preceding December 1.

Article 32 Working Leaders

Working leaders who do not successfully perform their duties of directing work and men shall be liable to reduction of status to the rank which they would otherwise hold, at the pay scale of the reduced rank.

Article 33 Maintenance Department

The Employer and the Union agree:

(1) Tools—Maintenance men shall provide all basic hand tools. The Employer will replace all broken or worn-out tools, when turned in by employees.

(2) Posting of Jobs—Only those jobs paying premium rate in excess of first class skill rate will be posted by the Employer.

(3) Maintenance men entering or leaving Company Shop area who are carrying tools will be allowed the nearest entrance or exit to work shop area.

(4) The Employer will provide first aid chest and oxygen in Maintenance Shop.

(5) The Employer shall provide adequate work space in Maintenance Shop well lighted and ventilated.

(6) The Company shall not change regular starting times unless there is a 48 hour notice to the regular change. Saturdays and Sundays are excluded. When changing regular shifts the Company shall notify the employees one week before the change is put into effect. Emergencies excepted.

ARTICLE 34 TERM OF AGREEMENT

This Agreement shall be in full force and effect from June 25, 1971, and shall remain in effect until and including June 14, 1974, and shall continue in force from year to year there-

after unless and until either of the parties hereto shall give to the other party sixty (60) days written notice prior to the end of the original term in 1974, or sixty (60) days written notice prior to the end of any subsequent year, of an intention to terminate at the end of the original term or of the then current year. In the event of an inadvertent failure by either party to give the notice set forth herein, such party may give such notice at any time prior to the termination or automatic renewal date of this Agreement. If a notice is given in accordance with the provisions of this Section, the expiration date of this Agreement shall be the sixty-first (61st) day following such notice.

In Witness Whereof, the parties hereto have set their hands and seals this 25th day of June, 1971.

For the Employer:

Super Tire Engineering Company
By /s/ Illegible

Supercap Corporation
By /s/ Illegible

For The Union:
/s/ John P. Greeley,
John P. Greeley,
President